FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
DECEMBER 10, 2008

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-AuClaire, Gordon Cross, Gene Dziza, Frank DeKort, Marc Pitman, Mike Mower, Randy Toavs and Jim Heim. Rita Hall had an excused absence. Allison Mouch, BJ Grieve and Alex Hogle represented the Flathead County Planning & Zoning Office.

There were approximately 14 people in the audience.

APPROVAL OF MINUTES

None.

PUBLIC COMMENT
(not related to agenda items)

None.

PRELIMINARY PLAT/LITTLE BEAR RUN SUBDIVISION (FPP 08-22)

A request by Maureen Baer and Fran Tabor, for Preliminary Plat approval of Little Bear Run Subdivision, a two (2) lot single-family residential subdivision on approximately 7.95 acres. Lots in the subdivision are proposed to have individual water and septic systems. The property is located at 19 Coltons Court, approximately seven (7) miles off of Vondherheide Lane and is unzoned.

STAFF REPORT

Allison Mouch reviewed staff report FPP 08-22 for the Board.

BOARD QUESTIONS

None.

APPLICANT PRESENTATION

Narda Wilson, 184 Midway Drive, represented the applicants. She was concerned about inconsistencies of when the road upgrades were required and why the applicants were being required to upgrade several roads for a two lot subdivision when last month the board did not require an upgrade in a similar situation. She passed out aerial photos to the board and talked about the roads. She went to the GIS website, looked up Lunch Box Springs Road and realized it had been named, but claimed it is a driveway from US Highway 2 to access the old Conrad Ranch Homestead. There never was an easement in place for the driveway and the purpose in the past has been a driveway. She talked about the restriction on basements. She went to the USGS soil survey website and saw the limitations on buildings with or without basements because of slope issues. She did not notice any slopes which would be an issue and did not see anything which referenced unstable soils. She expressed her concerns with standard conditions 2, 6, 14 and project-specific conditions 18, 21, 23, 24, 26(i).

BOARD QUESTIONS

Cross asked Wilson about the slopes mentioned in the Environmental Assessment (EA) and noted it indicated no slopes in excess of 25%. The diagram from staff states the slope is quite a bit above 25%.

Wilson said it was a matter of how the maps were interpreted. There is a ridge, but when she went out to the site it did not seem steep and had trees so she stated no one planned to build there. She and staff scaled the ridge on the map and it did not seem more than 20%. She did not view the slope information the same way staff did.

AGENCY COMMENTS

None.

PUBLIC COMMENT

Steve Nelson, 85 Colton's Court, said the slope is not 30% and the road does have a 20 foot gravel base on it. He does not feel the applicant needs to adjust the width of the road because of the fact there is not much traffic on the road.

APPLICANT REBUTTAL

None.

STAFF REBUTTAL

Mouch read a description from the web soils survey to the board. She did not have a problem altering condition 26 to allow for a home-based business.

Mike Mower asked if Lunch Box Springs is a road.

Mouch said yes, according to the county it is a private road.

Pitman asked how many residents it serviced.

Mouch said it crossed more than 2 lots but does not know how many people access it.

Heim asked who owns the lots the road crossed.

Mouch was not sure about each lot ownership, although a large portion does cross the applicant's property.

Toavs pointed out where Lunch Box Springs ends on a map.

MAIN MOTION TO ADOPT F.O.F.

Toavs made a motion seconded by Hickey-AuClaire to adopt staff report FPP 08-22 as findings-of-fact.

SUBSIDIARY MOTION TO ***(DELETE F.O.F. #4)***

Toavs made a motion seconded by Hickey-AuClaire to strike finding-of-fact #4.

ROLL CALL ***(DELETE F.O.F. #4)***

On a roll call vote the motion passed unanimously.

BOARD DISCUSSION

Cross asked when the current 24 foot standard road width for subdivisions applied as opposed to the original standard in place when the subdivision was originally proposed.

Grieve stated this is a subdivision being proposed now and subject to current regulations. He read regulations 4.7.16 and 4.7.18.

Cross asked if the staff was involved with the project on Ashley Lake.

Mouch said yes.

There was discussion on the Ashley Lake project.

Mower stated the Ashley Lake project lucked out on not being required to make their roads the 24 foot standard width.

Grieve understood why the inconsistency in enforcing road widths could be frustrating to the applicant, however, if a junior planner makes a mistake on one application, that mistake does not mean a free pass for everyone who comes after on the same issue.

Cross read the following statement on page 14 of the staff report regarding air quality; *if the applicant was required to pay for the above described methodology, the subdivision would not adversely impact air quality.* He does not agree with the sentence. The paving might mitigate air quality, but paving X amount of feet is not going to impact air quality.

Mower said usually prohibition on basements is because of water issues, not unstable soil. He believes the further a house is set in the ground the more stable it would be.

Pitman said designs exist for houses which accounted for slopes.

Cross said whether or not there is a basement does not seem to matter if the structure can be supported. It seems immaterial.

Toavs stated if they are going to put in a basement, they should be able to engineer a basement to work in the specific situation.

MOTION TO (*AMEND F.O.F. #12)*

Toavs made a motion seconded by Pitman to amend finding-of-fact #12 to read*: There would be impacts to public health and safety because of steep slopes and soil limitations present on proposed Lot 1. These impacts would be effectively mitigated with the imposition of conditions in accordance with Section 4.7.7(g) of the Flathead County Subdivision*

Regulations, requiring the applicant identify proposed driveway access and building pad location for Lot 1, requiring approval of the proposed driveway as suitable access by the Smith Valley Fire Marshall prior to the commencement of construction, and requiring a statement placed on the face of the final plat noting Lot 1 may be subject to steep terrain. ~~the construction of basements should be restricted due to soil limitations~~.

ROLL CALL (*AMEND F.O.F #12)*

On a roll call vote the motion passed unanimously.

ROLL CALL TO ADOPT F.O.F.

On a roll call vote the motion passed unanimously.

MOTION TO RECOMMEND APPROVAL

Toavs made a motion seconded by Heim to adopt Staff Report FPP 08-22 and recommend approval to the Board of County Commissioners.

MOTION TO (*REMOVE CONDITION #18)*

Heim made a motion seconded by Hickey-AuClaire to remove project-specific condition #18.

ROLL CALL (*REMOVE CONDITION #18)*

On a roll call vote the motion passed unanimously.

BOARD DISCUSSION

Cross talked about his drive on Lunch Box Springs Road as he exited the property per directions from the applicant which told him to take the road. He did not think it was a well kept road, but a road none the less. A sign existed where it intersected Highway 2.

Toavs said he did not know how the board could go against the fact the county had Lunch Box Springs Road on record as a road.

Cross stated they could leave the condition concerning Lunch Box Springs Road in and the applicant could do whatever they could do to get Lunch Box Springs Road changed from being labeled a road. If they were able to accomplish that, then the condition concerning it would no longer be an issue.

Mouch said if it is truly a driveway, then it is not an issue.

Grieve asked how many lots are accessed by the driveway.

Mouch said it crosses four or five properties, but the properties do not access Highway 2 or another road through Lunch Box Springs Road.

Wilson did not think it crossed four to five properties.

Mouch said the county classified it as a road because it is longer than a quarter mile. She said if the applicants can prove it is a driveway, she had no problem with the classification.

Grieve talked about a county resolution which established the criteria for roads verses driveways for emergency service purposes. Emergency responders need to know if it is a road or driveway. GIS looks at the road and determines if it is a road so responders know it is a road.

Mower said just because there is no access now on the four or five lots does not mean someone is not going to build on those lots later.

Grieve said the defining line between a driveway and a road in many circumstances is decided by the county resolution.

Heim asked how big the parcel is which is split off by the road.

Mouch said it is very small.

Heim asked if the road would eliminate the parcel if it was widened.

Mouch said in theory it might.

Toavs mentioned that staff asked for a boundary line adjustment (BLA).

Mouch said the applicant owns both parcels so it should be a simple way to take care of the problem.

Cross mentioned condition 26(i) and thought there was specific language which regards home-based occupations.

Grieve said there are standards for it but urged caution when using zoning language during a subdivision review.

Cross asked what the county has defined as a home-occupation. He wanted to reference it.

Grieve said it is section 7.09.020 and performance standard 5.06 of the Flathead County Zoning Regulations.

Mouch said there was not anything in the zoning regulations which preclude anyone from having a home based occupation in a residential zone, however this is an unzoned area.

Grieve said in the regulations it is stated a home occupation is seen as a separate accessory use not a primary one. Saying something is residential does not necessarily imply it can be used as a home

occupation. He again cautioned the board from using specific language for a subdivision. The property is not zoned right now.

Wilson does not see the problem with stating single-family residential uses and home-based businesses would be allowed.

Mower said if they included the language they would be zoning.

MOTION TO AMEND (*CONDITION #26(i)*)

Toavs made a motion seconded by Hickey-AuClaire to amend condition #26(i) to read as follows: *i. Lot 1 may be subject to steep terrain and unstable soils. ~~construction of basements is prohibited~~.*

ROLL CALL TO AMEND (*CONDITION #26(i)*)

On a roll call vote the motion passed unanimously.

ROLL CALL TO RECOMMEND APPROVAL AS CONDITIONED

On a roll call vote the motion passed unanimously.

PRELIMINARY PLATT/FOX HILL ESTATES PHASE 3 (FPP 08-21)

A request by TML Construction, for Preliminary Plat approval of Fox Hill Estates, Phase 3, an eight (8) lot single-family residential subdivision on 12.569 acres. Lots in the subdivision are proposed to have a community water and sewer systems. The property is located off Mennonite Church Road.

STAFF REPORT

Alex Hogle reviewed staff report FPP 08-21 for the board.

BOARD QUESTIONS

Heim asked how this preliminary plat application expired when the improvements were already in place.

Hogle was not sure if it was a functional reason it did not make it to final plat. There had been some legal matters with this final plat and the county was specifically at fault for not following subdivision regulations. Now the applicants are coming back through the process.

Heim asked if some of these improvements were finished before the application expired.

Hogle was unclear as to what was finished on the project before the expiration of the application.

Cross asked what changed from the original preliminary plat.

Hogle said the water and sewer systems changed.

DeKort asked if the board was to consider this as a stand alone project or as still related to all the other phases.

Hogle said it should be considered as its own project. The original review, which included Phase 3, included a park land requirement, which the applicant has more than met. He felt it inappropriate to request more park land in this application.

DeKort said the stream was referred to as an ephemeral stream in the staff report. He asked if staff made the determination.

Hogle said no.

APPLICANT PRESENTATION

Erica Wirtala, of Sands Surveying, represented the applicant and presented a PowerPoint presentation. She explained the history of the subdivision and why they initially ran out of time on phase 3. She said they could meet most of the conditions right now but had concerns about the condition to pave Mennonite Church Road. She talked about a future RSID to pave Creston Hatchery Road and Mennonite Church Road initiated by the Flathead County Road Department due to complaints of air quality. It is not fair for the Leighty brothers to pave 1,000+ feet of road and then a few months later pay a large amount of money as part of the RSID since they had approval once for the project and were not required to pave the road then.

Heim asked when the preliminary plat for phase 4 was completed.

Wirtala said July, 2008, the same time they submitted the final plat application for Phase 3.

Cross asked when the preliminary plat for phase 4 was approved.

Wirtala said 12/8/05; it expired 12/8/08. The applicant had it recorded in July of 2008.

Heim asked when the new Subdivision Regulations went into effect.

Wirtala said 2007.

Cross stated the preliminary plat for phase 4 was approved before the new subdivision regulations came into effect.

Wirtala said both projects were approved under the old regulations. She talked about the ratio formula for paving and does not think it was fair. She thought the previous formula of 50 feet per lot was more fair.

Cross asked if they were required to pave 50 foot per lot in the first place.

Wirtala said the Commissioner's decided the applicant did not need to pave and ordered them to do dust abatement instead.

Brett Birk, 2302 Highway 2 E in Kalispell, stated the water system in place in the subdivision is a Department of Environmental Quality (DEQ) approved system. He spoke about past issues with the system and the steps the applicant took to remedy them.

Cross mentioned a public comment letter regarding the current water quality and the request that no more houses be put on the system until water quality has been cleaned up. He asked if Birk knew what was being done to identify the source of the contamination.

Birk deferred the question to the applicants.

Mark Leighty, applicant, said they had some issues with drilling and bacteria with the first two wells. The conclusion was, the wells were contaminated and had groundwater in them. He replaced the wells one at a time and said he has not gotten it completely cleaned up as of now, However, he recently had clean samples taken. A chlorinator is setup in the pump house as per the Montana DEQ standards. It has not been in operation for the last couple of months so he could obtain accurate samples of the water. Last month, two out of five samples came up positive for bacteria. The DEQ said it is such a small number it is considered random. They have put a lot of time, money, and energy in working with DEQ to resolve this situation. Obtaining DEQ approval on wastewater treatment consumed time and he was not aware of the phasing timeline.

Mower asked how many units use the wastewater treatment now.

Leighty said 1 but it is designed for 40.

Cross asked how many households will be using the water system.

Leighty said 15 or 16. He talked about the difficulty of removing the contaminates.

Pitman said the same thing happen to him on a subdivision which did not have any houses hooked up.

The board and applicant discussed how the contamination may have happened.

AGENCY COMMENTS

None.

PUBLIC COMMENT

Mark Sherwood, 1521 Foxtail Drive, said he did not mean for his letter to be controversial, he just wants safe drinking water. If the system is

unhealthy, it does not seem right to put other people at risk. The residents have had unsafe water for over a year and would like to see the problem resolved. He does not object to the additional 8 lots. He had a problem with the RSID because he thought it was unfair, especially since 60% of the people (residents) have to pay for the other 40% of users who are using the road as a cut across. He thinks the Leightys should not have to pay a disproportionate amount of the paving either.

Sandra Badish, owner of Blaine Creek Farm (adjacent to the park area shown on the map), has lived there for 30 years. They operate a wool business and try to be good stewards of the land. They received a federal grant to repair forest area and are trying to maintain the agricultural and natural beauty of the area. They have their own well with great water but as of October of last year the well dried up. She depleted her savings account to drill a new well. This new phase would be directly adjacent to her property and she worried about her water supply running dry again. She talked about the wildlife habitat and commented there used to be a lot of wildlife on the property in question but some of it has moved to her property due to the development. She is going to great lengths to restore habitat for the displaced wildlife. Ultimately, her major concern is the water supply.

Noel Gorton, 578 Creston Road, read several portions of the Flathead County Zoning Regulations she felt related to this proposed subdivision and her disagreement with the application.

Cross stated this area is unzoned so the board is prohibited from applying zoning regulations to this particular application.

Tom Gorton, 578 Creston Road, handed out papers to the board which showed costs related to the proposed RSID. He also passed out photos which showed Mennonite Church Road and said they live with a huge amount of dust. He continued to talk about the RSID and how much it would cost the people living in the area. He reviewed several aspects of a variance request. He said the people in Fox Hill Estates signed a waiver of protest to an RSID. He felt with the amount of people who have signed a wavier, the remaining residents will have the RSID implemented and not have a fair voice in the decision. He stated the increase in traffic count over the last ten years was in part attributed to the amount of people who do not live on the road but use the road as a cut across.

Terry Leighty, applicant, reviewed the traffic counts and said it was not all traffic from their subdivision which caused the dust.

Diane Leighty, applicants' mother, needed to develop their property in order to retire and commented on the growth of the valley. She talked about the water issues raised and the road issue.

APPLICANT REBUTTAL

Wirtala said this development was previously approved and the applicants have been working on getting things completed. This preliminary plat was more of a 'housekeeping' issue because the infrastructure already exists. She talked about the water issue and the standards that needed to be met per DEQ. There are several different aquifers in the area and the applicant's well is tapped into a deep aquifer. She talked about some of the zoning regulations quoted during public comment and their variance request. In her opinion, the proposed RSID is not a direct result of Fox Hill Estates.

Pitman asked if the applicants have a water rights permit.

Wirtala said it is in the works and has been applied for.

DeKort asked if Wirtala could produce the DEQ paperwork that classified the stream as ephemeral.

Dziza asked what ephemeral means.

DeKort said it means the stream will only fill from snow melt and rain water.

Wirtala asked if he agreed with the DEQ definition.

DeKort said not at all. Blaine Creek comes from Lake Blaine. The reason there is no water in Blaine creek is because Lake Blaine has been in a drought situation for the last 10 years. As soon as Lake Blaine fills up to normal levels, there will be water in the creek.

Wirtala said they initially classified it as an intermittent stream but were corrected by DEQ.

There was a discussion on why Blaine creek was named ephemeral instead of intermittent and whether the definition changed the environmental impact.

STAFF REBUTTAL

Hogle said the proposed RSID was not submitted as part of this application. He said the regulations are clear that paving is required.

MAIN MOTION TO ADOPT F.O.F.

Hickey-AuClaire made a motion seconded by Toavs to adopt staff report FPP 08-21 as findings-of-fact.

MOTION TO (*ADD F.O.F #18)*

Toavs made a motion seconded by Pitman to add F.O.F. #18 to state: *A coliform issue has been found in the public water system of the subdivision. The developer has been and is still is addressing the issue under the direction of the Montana DEQ.*

ROLL CALL TO (*ADD F.O.F #18)*

On a roll call vote the motion passed unanimously.

BOARD DISCUSSION

Cross pointed out the public comment from Glen Gray at Flathead City-County Environmental Health, that the water system did need another DEQ approval to continue. He encouraged people who voiced concerns about water quality to contact DEQ and let them know their concerns as well.

ROLL CALL TO ADOPT F.O.F. AS AMENDED

On a roll call vote the motion passed unanimously.

MOTION TO RECOMMEND APPROVAL

Heim made a motion seconded by Pitman to adopt Staff Report FPP 08-21 and recommend approval to the Board of County Commissioners.

MOTION TO (*AMEND CONDITION #6)*

Toavs made a motion seconded by Hickey-AuClaire to amend site-specific condition #6 to read: *6. All internal subdivision roads shall be certified by a licensed engineer. ~~and constructed in accordance with the Flathead County Minimum Standards for Design and Construction. [Section 4.7.16(e), FCSR]~~*

ROLL CALL TO (*AMEND CONDITION #6)*

On a roll call vote the motion passed unanimously.

MOTION TO (*AMEND CONDITION #22)*

DeKort made a motion seconded by Hickey-AuClaire to amend condition #22 to read: *A "No-Build Zone" and vegetation buffer within the Blaine Creek drainage eastward to the boundary of the 100 year floodplain shall be shown on the face of the final plat.*

BOARD DISCUSSION

Cross asked Hogle to note DeKort's concern about the classification of Blaine Creek.

DeKort read Appendix C of the Environmental Assessment (EA) and thought it was completely false.

Mower said even if it was false the problem was taken care of by the vegetative buffer.

DeKort said there would certainly be wildlife issues.

Pitman supported DeKort's opinion of the issue.

DeKort thought the wildlife assessment was not accurate and wanted to ask staff about that issue.

Hogle said the same issue of the classification of Blaine Creek as ephemeral concerned him as well. He stated the current assessment was round two of an environmental assessment. He questioned the word defunct himself. The information the board had was Wirtala's attempt to address the assessment of the stream.

Wirtala said a 2004 letter from Roger Noble, senior pathologist at Lindon Water, was included in the board packets. She reviewed it for the board.

Mower gave the definition of an intermittent and said it flows at least once per year.

DeKort said Roger Noble's letter says the stream has been dry for four years. He still has not seen the DEQ letter.

The board discussed the Blaine Creek definition at length.

The board discussed what was allowed and not allowed in a vegetative buffer.

ROLL CALL TO AMEND (*CONDITION #22)*

On a roll call vote the motion passed unanimously.

BOARD DISCUSSION

Pitman asked if a water rights permit is required at final plat under the new subdivision regulations.

Hogle said it is required in the current regulations under appendix B letter t.

Cross agreed with Hogle, the RSID is a separate issue from the paving. He would be hesitant not to apply the rules this application came in under.

DeKort asked if a condition on the DEQ report which concerned the limit of one house with four bedrooms on certain lots should be added onto final plat so people know what is accepted on the lots.

Pitman said it is standard wording on the DEQ reports.

Mower supported leaving the paving as is. He said with what is happening in the county now, it will be unlikely the RSID will go through and it will be a burden on the residents.

Heim said at first he did not think it appropriate to apply the new subdivision regulations in regard to paving, but after hearing public testimony, he came to the conclusion the applicant received a waiver in the first approval on the paving, so he is inclined to leave the condition in. He believes it is the commissioners decision not the board's.

ROLL CALL TO RECOMMEND APPROVAL

On a roll call vote the motion passed 7-1 with DeKort dissenting.

COMMITTEE REPORTS

Toavs gave a report on what Committee A is working on.

Committee B has not met yet.

OLD BUSINESS

Cross talked about Rita Hall's personal situation. He said she still very much wants to sit on the board and hopefully will be able to attend meetings very soon. She is very interested in the Whitefish area project which is on the December 17, 2008 Planning Board meeting's agenda.

DeKort made a motion seconded by Hickey-AuClaire to change the order of the December 17 agenda to place the Whitefish area project first.

The motion carried by quorum.

NEW BUSINESS

Grieve updated the board on the Whitefish area rezoning project. He told the board staff mailed a notice to everyone in the proposed rezoning area and have received mixed responses to the letters.

Hickey-AuClaire made a motion to rescind the last motion, seconded by Toavs.

The motion carried by quorum.

ADJOURNMENT

The meeting was adjourned at approximately 9:30 pm. on a motion by DeKort seconded by Heim. The next meeting will be held at 6:00 p.m. on December 17, 2008.

_____ _____

Gordon Cross, President Donna Valade, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 1/21/09