

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
MARCH 11, 2015**

**CALL TO
ORDER
6:06 pm**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. at the Earl Bennett Building, Conference Rooms A and B, 1035 1st Ave W, Kalispell, Montana. Board members present were, Tim Calaway, Kevin Lake, Ron Schlegel, Dean Sirucek, Jim Heim, Jeff Larsen, Mike Horn and Greg Stevens. Marie Hickey-AuClaire had an excused absence. BJ Grieve, Rachel Ezell and Erik Mack represented the Flathead County Planning & Zoning Office.

There were 12 people in the audience.

**APPROVAL OF
MINUTES
6:07 pm**

Sirucek made a motion, seconded by Heim to approve the February 11, 2015 meeting minutes and the February 11, 2015 workshop minutes.

The motion passed by quorum.

**PUBLIC
COMMENT
(not related to
agenda items)
6:08 pm**

Thomas Mathisen, 255 Blanchard Lake Rd, owns a piece of property which was located in the former Whitefish donut area. He asked for a variance on the property which he had purchased and had lost a sale on because it was now zoned business not residential even though there was a house on it.

**PHEASANT
HAVEN PH 4
(FPP-14-02)**

A request by Dan Brosten for Preliminary Plat approval of Pheasant Haven Phase 4, a 5-lot residential subdivision on 41.39 acres, which is the fourth and final phase of the Pheasant Haven subdivision (FPP-04-03). All lots would be served by individual wells and wastewater treatment systems. The property is located approximately 6.5 miles southeast of Kalispell near the intersection of Farm Road and Manning Road. Primary access to the subdivision would be from Pheasant Haven Drive and Pheasant Tail Court via Manning Road and Farm Road.

STAFF REPORT

Schlegel recused himself from hearing the application.

Stevens said Mathisen may not want to sit through the rest of the meeting. The board did not address variances without a formal application. Variances went through the Board of Adjustment. Any further questions should be addressed to Grieve during normal business hours and he could help him out with process.

Mathisen said he had attended and commented because this was where he was told to come.

Mack clarified for the board he had spoken to Mathisen about his issue with the zoning and what the issue was.

Larsen said the comment was concerning the work the board was doing on the zoning in the former Whitefish donut area.

Mack agreed.

Larsen said the comment would fall under the work session in April.

Stevens clarified he did not want Mathisen to wait through the meeting expecting something to be discussed concerning his comment then not have any discussion. He took down Mathisen's name and number. He apologized for interrupting the meeting.

Sirucek asked for guidance from Larsen if he needed to recuse himself from the meeting due to a possible conflict of interest.

Larsen reviewed the guidelines for recusing yourself.

Ezell reviewed Staff Report FPP-14-02 for the Board.

**BOARD
QUESTIONS**

None.

**APPLICANT
PRESENTATION**

Eric Mulcahy, Sands Surveying represented the applicant. He said staff had done a good job on the review and they were satisfied with the conditions proposed. He reviewed the history of the application and the expiration of the original plat. He said their application was identical to what had been previously approved. He did not know if it was pristine wildlife habitat such as Parks and Wildlife had indicated due to the fact it was a former feedlot. The lots are large and the building sites would be fairly confined but at this point they did not know where specifically they would indicate the building sites. He was happy to answer any questions and the applicant was present to answer any questions the board may have.

**BOARD
QUESTIONS**

Calaway asked if they were against clustering if possible.

Mulcahy said they did not want to go back to the drawing board and try to cluster the lots. The subdivision already had all its DEQ approvals. If they changed the lots, they would need to go through the DEQ process again.

Calaway and Mulcahy discussed if the applicant wanted to designate building sites and the pros and cons of establishing building sites at this time.

Horn joined the meeting at 6:22 pm.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

Larsen asked if any written public comment had been received.

Ezell said no public comment had been received, only agency comments.

No public in attendance rose to comment.

**STAFF
REBUTTAL**

None.

**APPLICANT
REBUTTAL**

Dan Brosten, applicant, explained the thoughts on not clustering due to poor ground for agriculture. The HOA for the subdivision had an architectural review committee which requested there be site approval before a purchaser could build. There were perimeters in place which protected others.

**MAIN MOTION
TO ADOPT
F.O.F.
(FPP-14-02)**

Stevens made a motion to accept staff report FPP-14-02 as findings-of-fact.

Sirucek seconded.

**BOARD
DISCUSSION**

Calaway said the applicant had answered his question on clustering. He had seen situations where it didn't matter where the houses were placed since nothing would grow out there anyway. The logic was if they could, would they?

**ROLL CALL TO
ADOPT F.O.F.
(FPP-14-02)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO
RECOMMEND
APPROVAL OF
CONDITIONS
(FPP-14-02)**

Heim made a motion to make a positive recommendation to the County Commissioners for this project.

Calaway seconded.

Larsen reviewed the motion.

**ROLL CALL TO
RECOMMEND
APPROVAL OF
(FPP-14-02)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Larsen reviewed the process the application would follow from this point on.

**LAKE AND
LAKESHORE
TEXT
AMENDMENT
(FLLSTA-15-01)
6:28 pm**

A request by the Flathead County Planning Board to amend the text of the Flathead County Lake and Lakeshore Protection Regulations by adding Lost Coon Lake and Whitefish Lake to Section 1.4 (Jurisdiction). The proposed amendment to Section 1.4 also provides values for the elevation of mean annual high water on Lost Coon and Whitefish Lakes and the low water mark for Whitefish Lake. The proposed amendment will make rural properties on Whitefish Lake subject to the Flathead County Lake and Lakeshore Protection Regulations above the extent of the low water mark.

STAFF REPORT

Grieve reviewed FLLSTA-15-01 for the board and what the board had received to date. He reviewed his consultation with the Flathead County Attorney's office about the ordinary low water mark, what that meant and using the mean high and the lowest low. The conclusion was the mean low would be a consistent low to use when the mean high was used. He also reviewed the information he gathered during his attendance at a Whitefish work session concerning high water, low water and the meaning of low water for establishing Whitefish city limits. He summarized what they had talked about and the letter the Whitefish board had forwarded to the county requesting the board use the mean low water mark for the Whitefish city limit. He reviewed communication from the work session, Marc Pitman from DNRC and Dave Taylor concerning the definition of 'low water mark'. The definition was found in ARM 36.25.1101. He read the definition for the board. 'Low water mark means the location of the waterline of a navigable river at the lowest tenth percentile of historic annual flow as measured by the nearest

upstream hypergraph station.’ He had not found where low water for a navigable river was comparable to a navigable lake. If they looked further they may be able to find the comparison. They may not have to. DNRC uses that definition when they determine state lease land with both rivers and lakes. He explained how the low water mark had been arrived at using the tenth percentile and 53 years’ worth of lake levels. What had been arrived at was the elevation of 2996.44 as the tenth percentile. He went on to explain how the information had been forwarded to Whitefish and the resulting letter from mayor Muhlfeld which stated they were comfortable with the elevation of 2996.44 as the low water mark for Whitefish Lake. It appeared at this time a very reasonable low water mark elevation upon which the county and the city could agree. He brought the attention of the board to M.C.A. 75.7.214 which stated ‘If a lake, as defined by this part, is located under the jurisdiction of more than one governing body, the governing bodies are empowered and encouraged to enter into agreements to effectuate the purposes of this part and establish compatible criteria for denial or issuance of permits.’ According to the county attorneys, the statute encouraged the county and Whitefish to work together which he felt they had. He thought this value was reasonable and it was his sincere hope the board could see to recommend approval of this text amendment with the revision to the low water mark being 2996.44 to the county commissioners. He asked if the board had any questions.

**BOARD
QUESTIONS**

Schlegel and Grieve discussed if the new water compact would be an impact. Grieve said he had not come across that issue. It was county regulations establishing jurisdiction. There was an elevation on which both parties agreed.

Grieve and Stevens discussed how the elevation was arrived at.

Grieve and the board discussed what the mean high-water mark was and if the high water mark was acceptable to Whitefish. Whitefish planned to work the two new lake values into their regulations. They also discussed the graph Grieve had given to the board concerning water levels.

Calaway asked Grieve if he would like the board to entertain a motion.

Grieve reviewed what was required by M.C.A. regarding establishing regulations concerning lakeshore and what

constituted public record on which the board's decision was based. He had drafted a possible recommendation with the low water elevation for the board's consideration. He explained the evaluation.

Sirucek asked if longer time was needed to notice the change in elevation for public input.

Grieve said public notice had been given and elaborated.

Larsen reviewed with Grieve the text amendment with the elevations and the addition of Whitefish and Lost Coon Lakes.

Grieve and Schlegel discussed if Grieve had been able to obtain the lowest water mark of the river.

Calaway and Schlegel discussed why Schlegel wanted to know what the lowest water mark of the river was.

The board discussed at length the possible effect of the water compact on the lakes in the area and if Whitefish Lake was in the water compact.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

Larsen confirmed written comment was received at the meeting. He asked if the board wanted to take a ten minute break to read the public comment and information before them.

Grieve confirmed the board intended to take verbal public comment after the break. He reviewed what was in the information before the board.

Larsen asked Grieve to summarize the comments from Jim Stack.

Grieve recommended the board read the comments for themselves.

Larsen called the recess at 6:58 pm.

The board reconvened at 7:09 pm

Rebecca Norton, 530 Scott Ave, said the public had not had

much time to assimilate what had transpired. She thought it was last week the low water mark had been decided. Unless someone went down to the office, they would not know the elevation which had been decided on. She didn't think anyone in the area knew what was going on. She was in approval of the DNRC standard.

**BOARD
DISCUSSION**

Larsen asked if Grieve had anything to add to the proposal.

Grieve read the legal notice published in the newspaper. He said anyone who had read the notice would know to come to the meeting to comment on the text amendment. He read the wording of the text amendment concerning the low water mark.

Larsen reviewed with Grieve what was being proposed in the text amendment.

Sirucek clarified process with Larsen.

The board and Grieve discussed possible wording of a motion.

**MAIN MOTION
TO
RECOMMEND
APPROVAL OF
(FLLSTA-15-01)**

Heim made a motion to adopt the text amendment as presented and revised from what was in the legal notice in the paper to...

Grieve said not to say 'in the legal notice' in the motion. The legal notice said they were just going to be discussing a low water mark elevation. He said that which was originally proposed versus that which was proposed as a revision at the meeting based on agency comment.

Calaway said he could mention 'on section 1.4 as well.'

Larsen said so revised from what they had in their packets.

Grieve said it was important because if someone sues, they were going to say it was this and this, but if the record and the motion clearly showed it was a revision proposed by staff based on agency comment at the March 11, 2015 public hearing...

Heim asked if Donna Valade had captured the motion.

Sirucek seconded the motion.

Larsen asked if Valade had got the motion.

Valade said she would need to sort it out from the recording.

Larsen said basically, the motion was that the board recommend approval but add revised on the mean low water elevation based on public comment received after the board's packets had been sent.

Heim agreed.

Schlegel added in section 1.4.

Larsen asked for a second.

Sirucek seconded again.

Larsen said there was a motion by Heim, seconded by Sirucek to adopt the text amendment but revise the mean low water based on agency comment to 2996.44.

ASK THE QUESTION

Horn asked the question.

ROLL CALL TO RECOMMEND APPROVAL OF

On a roll call vote the motion passed unanimously.

OLD BUSINESS

None.

NEW BUSINESS

None.

ADJOURNMENT

The meeting was adjourned at approximately 7:18 pm. on a motion by Stevens. The next meeting will be held at 6:00 p.m. on May 13, 2015.

Marie Hickey-AuClaire, Chairman

Donna Valade, Recording Secretary

*APPROVED AS **SUBMITTED**/CORRECTED: 5 / 13 / 15*