

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
MAY 14, 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, Marc Pitman, Mike Mower, Gordon Cross, Gene Dziza, Frank DeKort, Rita Hall, and Jim Heim. Randy Toavs was absent. Andrew Hagemeyer and Jeff Harris represented the Flathead County Planning & Zoning Office.

There were approximately 6 people in the audience.

APPROVAL OF MINUTES Heim made a motion to approve the March 26, 2008 meeting minutes as corrected and the April 2, 2008 meeting minutes.

The motion was carried by quorum.

PUBLIC COMMENT
(not related to agenda items)

None.

FALCON/HAY (FZC 08-04) A Zone Change request in the Highway 93 North Zoning District by Kirk & Andrea Falcon and Glen & Helen Hay from SAG-10 (Suburban Agricultural) to SAG-5 (Suburban Agricultural). The properties are located at 2075 Pine Grove Land and 1975 Pine Grove Lane.

STAFF REPORT Andrew Hagemeyer reviewed Staff Report FZC 08-04 for the Board.

BOARD QUESTIONS Cross asked if the parcels shown on the zoning map were all part of the Highway 93 North zoning district.

Hagemeyer explained.

Cross asked for a larger map to be included with the staff report that shows where parcels are in relation to the zoning district.

Hagemeyer told the Board he received some public comment and passed copies out to the Board. He reviewed the main concerns of the comments.

APPLICANT PRESENTATION Erica Wirtala, of Sands Surveying, represented the applicant. She said SAG-5 is a good fit as the properties are surrounded by SAG-5 on 3 sides. She said Mr. Hay is working on putting together an estate and would like to give land to his children. The Falcon's are considering doing a boundary line adjustment (BLA). She discussed the condition of the road and the Road User's Agreement. She discussed the average number of vehicle trips per day. She said the zone change is compliant

with the growth policy and feels it's a good fit.

Andrea Falcon, applicant, said there are a few reasons they started this zone change. She set her neighborhood met as a group in regard to the Two Rivers Neighborhood Plan. They didn't join in on that plan because of covenant restrictions. Part of the reason they want to do this zone change is so they can retire and stay on their property.

Cross asked the applicant's when the road came about.

Falcon discussed the history of the area. She said Pine Grove Lane was used for access to Morning View subdivision.

Dziza said there seems to be 6 lots in the Morning View subdivision.

Falcon further explained the lots.

Mower was confused as to whether or not there is a Road User's agreement.

Falcon said yes, there is. She explained the history behind it and talked about covenants.

Kirk Falcon said there are 13 voting parcels on that Road User's Agreement. He referenced Bill Ashe's letter.

**AGENCY
COMMENT**

None.

**PUBLIC
COMMENT**

Bill Ashe, 1870 Pine Grove Lane, read the letter he wrote to the board and expressed his concerns.

Bob Gembolis, 1980 Pine Grove Lane, said his main concern is the road. He said it's in rough shape where it was oiled. He said the Road Agreement has not been very valid or viable in the 15 years he's lived there. He doesn't feel it's reliable.

**APPLICANT
REBUTTAL**

None.

**STAFF
REBUTTAL**

None.

**BOARD
DISCUSSION**

Pitman asked for a short break to review the public comment that was submitted.

Wirtala handed out large copies of the Pine Grove Road bank account spreadsheet.

**MAIN MOTION
TO ACCEPT
F.O.F.**

DeKort made a motion seconded by Hickey-AuClaire to adopt staff report FZC 08-04 as findings-of-fact.

**BOARD
DISCUSSION**

Cross asked Jeff Harris to explain a bit about the Two Rivers plan.

Harris explained. He said the plan is challenging to interpret; there's not a lot of substance to it.

Wirtala pointed out the included parcels on the map.

Harris said the plan didn't give any densities.

Cross asked staff's view of the Road User's Agreement.

Hagemeier said it's hard to interpret. He said it's a private agreement between parties. If there's a problem with it, a lawyer usually gets involved. It's tough to tell if the Road User's Agreement is no longer functioning or if no one's enforcing it.

Pitman asked if the Road User's Agreement was part of the 5-lot minor subdivision.

Hagemeier said that's his understanding and it was later expanded.

Wirtala said everyone who fronted on the road was added into the agreement in 2007.

Pitman thought a Road User's Agreement came into play at Final Plat stage. He thought this type of thing is enforceable.

Hagemeier said it's not on the face of the final plat but it's submitted with Final Plat application materials.

Hickey-AuClaire stated it would be between parties involved, not with the county.

Staff agreed.

Pitman asked about surrounding areas getting annexed into the city.

Cross's problem with this zone change is access. He drove out there and said the road is windy and fairly substandard.

Hagemeier said he didn't have the same experience when he went out there. He had similar concerns when reviewing the zone change. He didn't feel it would be appropriate if there wasn't a mechanism to maintain the road. He contacted Erica at Sands, who did some research and came back with the Road User's Agreement. He talked

about emergency vehicle turnarounds.

Mower said this Road User's Agreement isn't unlike most out there. He said people can sue but it's expensive and can be difficult. He pointed out that the issues at hand are things dealt with at the subdivision point.

Harris said if it goes through subdivision at all, it can be conditioned. If it's a minor it goes straight to the Commissioner's, if it's a major it would come before the board. He said there is concern when it doesn't go through subdivision review; it could be family transferred to death.

Mower talked about roads and dust problems in the county. He said if the developer has to pave the road it's one thing but if they do family transfers it circumvents the whole thing.

Dziza pointed out that deposits are to be made, by each lot owner, by January of each year into the Road User's Agreement account.

Wirtala discussed Road User's Association. She said road users/homeowners associations are only as viable as the homeowners care to run it. She if people complain about the road, they have no one to look at but themselves. If someone isn't happy with something, in any association, they need to hold regular meetings and work as a cohesive unit with their neighbors.

Cross said he understood that more members were added in 2007 and the covenants were dropped.

Wirtala talked about the Road User's Agreement and Homeowner's Associations. She mentioned family transfers and the intent of each applicant to pass on some land to their children. She said family transferring it to death would be pretty hard to do.

Pitman said the soil out there is a silty-sandy loam. The road will be a problem and will get potholes frequently. He talked about groundwater and wells. He said the whole "end of the road" thing bothers him.

Bob Gembolis commented on the soils.

Cross tried to craft a finding in regard to the public comment.

**MOTION TO ADD
FINDING-OF-
FACT**

Cross made a motion seconded by Hickey-AuClaire to add a finding of fact to read: *Public testimony attested to the poor quality of the road, the unsuitable soils underneath the road, and the dysfunctional nature of the Road User's Agreement.*

**ROLL CALL
TO ADD
FINDING-OF-
FACT**

The motion passed unanimously.

**MAIN ROLL CALL
TO ACCEPT
F.O.F.**

On a roll call vote the motion passed unanimously.

**MOTION TO
RECOMMEND
DENIAL**

Hall made a motion seconded by Pitman to adopt Staff Report FZC 08-04 and recommend **denial** to the Board of County Commissioners.

**BOARD
DISCUSSION**

Hall said she was really concerned with family transfers. The current zoning wouldn't allow that parcel to be broken up into 5-acre parcels.

Harris asked for clarification from the Board as to the findings-of-fact. He suggested the Board go back and review the original two findings so there's no confusion.

Cross said they had a long discussion about findings last meeting. He continued to talk about findings-of-fact.

Harris just wanted to make sure the Board was comfortable proceeding.

Cross said the board already had considerable discussion about the findings.

**ROLL CALL TO
RECOMMEND
DENIAL**

On a roll call vote the motion passed unanimously.

Cross said there is another hearing at the County level at which people will have an opportunity to "state their case" with the Commissioners.

Harris encouraged the audience to attend that hearing as well.

OLD BUSINESS

Harris wanted to know who wants to sit on Impact Fee Committee.

Cross said they already talked about it. Randy and Marc offered to sit on the Committee.

Harris thanked the board for the retreat. He said it was productive.

Dziza discussed how the Board discusses things and made a few recommendations in that regard. He said discuss tends to be more in-depth during the recommendation part versus the findings. He thinks it would be appropriate for the chair to see if anyone wants to revisit the findings; it might not be a bad procedure in some cases.

Pitman asked if a board member could do that.

Harris said yes. He said if you do that, you may want to revisit the decision again so no one can argue that your decision didn't reflect what you found as factual. He talked about Jonathan Smith's, County Attorney, take on the matter.

Jim Heim thought it was an ok zone change until he heard the part about the road.

The Board continued to discuss the zone change.

Hall asked Harris if the board would see more road issues like this one.

Harris said yes.

The Board and staff discussed Road User's Agreements and covenants; they are a civil issue.

NEW BUSINESS

The board and staff discussed the bylaws at length.

ADJOURNMENT

The meeting was adjourned at approximately 7:50 p.m. on a motion by DeKort seconded by Hall. The next meeting will be held at 6:00 p.m. on May 21, 2008.

Gordon Cross, President

Jill Goodnough, Recording Secretary

APPROVED AS SUBMITTED/ CORRECTED: 6/11/08