

**BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
OCTOBER 7, 2008**

CALL TO ORDER A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Board members present were Craig Wagner, Gina Klempel, Scott Hollinger and Mark Hash. Tony Sagami had an excused absence. Jeff Harris, Dianna Broadie and George Smith represented the Flathead County Planning & Zoning Office.

There were approximately 30 people in the audience.

APPROVAL OF MINUTES Klempel made a motion seconded by Wagner to approve the August 5, 2008 and September 2, 2008 meeting minutes.

The motion carried by quorum.

PUBLIC COMMENT
(not related to agenda items) None.

PUBLIC REVIEW Hollinger reviewed the public hearing process.

MAYHEW ZONING VARIANCE (FZV 08-04) A request by Dennis & Phyllis Mayhew and Spenser & Natalie Mayhew, for a Zoning Variance to property within the Evergreen, R-2 (One0Family Limited Residential) Zoning District. The applicants are requesting a variance to Section 5.08.010(3)(A) 20 foot wide deeded access for flag lots and Section 3.10.040(3)(A) 10 foot side yard setback of the Flathead County Zoning Regulations. The property is located at 39 Sunset Drive.

STAFF REPORT Dianna Broadie reviewed Staff Report FZV 08-04 for the Board.

BOARD QUESTIONS None.

APPLICANT PRESENTATION Narda Wilson, 184 Midway Drive, represented the applicants. Georgiana Mayhew would like to convey the rear portion of her property to her grandchildren. This property was developed prior to Evergreen Water and Sewer. The primary issue related to this property is fire access. They worked with Evergreen Fire and Rescue to make sure fire needs are adequately addressed. She spoke with the fire chief and said the fire department will be looking to make sure the emergency vehicles have access to the sight. They will probably be required to put in a fire hydrant because Evergreen has fire hydrant accessibility and that would also lower their ISO rating. They have no problem with that. The grandchildren intend to build their personal

residence on this lot and felt this was a reasonable request. They also felt this proposal was applicable to the situation considering municipal services, density in the area and access off a paved county street.

Hollinger asked if they would be paving the driveway.

Wilson said it would probably be gravel. The fire department talks about an all weather surface designed to support all legal loads of the jurisdiction. They would do whatever the fire department requires. Being a driveway, it doesn't necessarily require paving but needs to adhere to a uniform fire code for all weather surfaces.

Georgiana Mayhew hoped they would approve the proposal because it was space not being used and has plenty of room for a nice home. She thought it would be a benefit to the neighborhood and to her to have them there. She said it would be a good thing for all of them.

Spencer Mayhew stated he would be building a home there with his wife and felt it would be good for their start. He wanted to be there to help his grandmother should anything happen.

Phyllis Mayhew thought this was a wonderful idea as they are a close family and this would be a great peace of mind to have her son on the property. It would be comforting for her family for her son to be there for day to day assistance.

PUBLIC COMMENT

Lonnie Kincel, 37 Sunset Drive, said he did not object to this variance at all.

Rhett Griffin, 422 Margrethe Road, asked if the only access would be off of Sunset Drive. The answer was yes and he stated he had no objections.

STAFF REBUTTAL

Broadie stated it was true they did not necessarily need to pave the driveway although the board could condition it that way. For clarification of understanding, the next step would still be to take this through subdivision review and they would look at the same issue.

APPLICANT REBUTTAL

None.

BOARD DISCUSSION

None.

MAIN MOTION

Wagner made a motion seconded by Klempel to adopt Staff Report FZV 08-04 as findings-of-fact with the proposed conditions.

MAIN MOTION ROLL CALL

On a roll call vote the motion passed unanimously.

**CONDITIONAL
USE
PERMIT/NAADER
SHAGAGI
(FCU 08-15)**

A request by Naader Shagagi, for a Conditional Use Permit to construct four guest cabins and operate a Christian Mysticism Center (retreat center) within the Bigfork, AG-20 (Agricultural) Zoning District. The property is located at 199 Drew Lane.

STAFF REPORT

George Smith reviewed Staff Report FCU 08-15 for the Board.

**BOARD
QUESTIONS**

Klempel asked if there were a road maintenance agreement in place.

Smith said to his knowledge there was not a road maintenance agreement but it was done on an ad-hoc basis by different parties at different times. It includes snow removal.

Klempel asked what the water table was out there.

Smith said he did not know the depth but a letter he received indicated the water table was adequate for the adjacent property although he didn't know about the subject property. There is a permitted septic on the property now which has a guest house and a single family residence.

**APPLICANT
PRESENTATION**

Naader Shagagi agreed with staff and said he was available for questions. He stated they had discussed the proposal at the Bigfork Land Use Advisory Committee meeting (BLUAC) and felt this was a great opportunity to elevate a person's conscience a little higher. Basically it is a retreat center where a person can achieve personal reflection inside and outside of themselves.

**PUBLIC
COMMENT**

Cliff Palmer, 355 Wild Swan Trail, referred to a document he handed to the board and stated the access is a dead end, private road. Essentially the traffic would be doubled. There are a total of nine property owners that live off of this road. This is a very rural neighborhood and it is precious to all of them. They feel the proposal would lead to a profound change in the neighborhood. He again referred to the document and stated they had seven of the neighbors that had signed in opposition of the application. He named the property owners and said the general feeling amongst them was they were not sure of the nature of the applicant's request. There was a vagueness that concerned them. They are all concerned about traffic. He spoke of Drew Lane being narrow and would be profoundly impacted by any increase in traffic. He said there were sensitive wetlands in the area and they were concerned about their well water and sanitation facilities. They were also concerned about the change in the nature of the rural neighborhood. In general it has been a very quiet area that has existed for the neighborhood. He said Julian Lane was approximately 20 feet wide and would be workable for two cars but Drew Lane could not support two cars.

Fred Hodgeboom, 1125 Whispering Pines, spoke of his credentials as a forester and working with natural resources, stating he had 45 years of experience. He represented the Palmers regarding problems in the neighborhood. He spoke of prior owners and the history of the property and read a definition of wetlands from the Flathead County regulations. He talked about vegetation and soils on the property and referenced the handout given to the board explaining where the wetlands were located. He had a lot of concerns regarding the capacity and design of the septic systems. He was also concerned about wrong and incomplete information being presented to BLUAC. He stated the conditional use permit would not comply with the Flathead County Development Code or the Bigfork Neighborhood Plan. He read the definition of a home occupation from the Flathead County Development Code and said he believed both applications being presented tonight were questionable in that respect. Especially the Stoddard application as they had already been in violation of the definition. It seemed to him both permits would have to have specified maximums that met the definition of a home based business. He stated concerns about fire safety and questioned adequate defensible space standards around the properties. He felt the fire chief should certify he was willing to put his crews in there should a fire occur. There are a lot of risk factors for fire in the area and if a conditional use permit was granted, it should specify the applicant's couldn't serve clients during times when extreme fire danger was classified. There would be too many people in such a dangerous situation. He spoke of his concerns about food service and said the permit, if issued, should require county sanitarian to certify the kitchen and sanitary facilities should be scaled to the amount of people at one time. He believed what happened were they had businesses actually started in a serendipitous way with no oversight for vegetative screening and had questionable septic systems. He thought no permit should be granted until there was an assurance of what the maximum number of people at one time would be and also the health and safety concerns were adequately addressed.

Klempel asked if one of his main concerns was there wasn't any wild land urban interfacing.

Hodgeboom said the fuel conditions were there and when there were very high or extreme burning conditions he didn't think people could get out of there.

Hollinger asked if anybody out there had done anything about defensible space.

Hodgeboom said he did not make a site visit to either of these properties but he could see from the aerial photos and from driving on the road. He could not see any defensible space standards on any of

the homes in the area.

Hollinger asked what the well depth was in the area.

(Members of the public stated their well depth).

Hodgeboom said there was a complex shallow aquifer in the area.

Debbie Steyh, 500 Julian Lane, was concerned about her well being 97 feet and there being wetland in between the properties. Anything coming downhill will get into her water. They moved there to get away from traffic and noise and she had major concerns.

Jessica Beasley, 622 Wild Swan Trail, said the only access to her property was from Drew Lane and it was very narrow. She spoke of traffic in the area and how dangerous it was in the winter. They moved there from Bigfork for the peace and seclusion of the area. It's rural and natural and that's what they love about it. The majority of the people are opposed to the businesses in the area and they are concerned about wetlands, fire safety, and sanitation. All of these are legitimate reasons why they don't want businesses there. They love their peace and quiet.

Eric Kaplan, attorney, represented the Palmers specifically, but also spoke on behalf of the concerned neighbors. He spoke of peoples' concerns regarding the businesses and stated this is not a permitted use and there was a reason for that. It does not fit legally into this zoning area. The burden was entirely on the applicants to satisfy the criteria for issuance of a conditional use permit. The applicant has to prove he has met all the requirements and the concerns have been mitigated. He referenced the Bigfork Neighborhood Plan and stated the document had to be considered. He read from the neighborhood plan regarding noise pollution, wetlands, dust control and natural resources. He spoke of the concerns about fire safety and emergency vehicle accesses. He also spoke of property owners' easements and accesses for ingress and egress. There was nothing on the record that demonstrated the business clients had the right to use these roads. Without that there would be no access.

Hollinger asked if he meant the only people that had rights to travel the road are the people that live there.

Kaplan said it's only a problem if people object.

Hash said he was not sure that was an issue this board deals with. The board could not decide whether or not they had legal access or not although he understood their point. What Kaplan was saying was it was a personal easement and only a few owners could drive on this property. He didn't think the board was in a position to make that

decision although they would take it into consideration. They can't rely on Kaplan's statement regarding access to the property.

Kaplan spoke of the accesses and said the board had to make a specific finding on the issue. He thought it was within the boards' jurisdiction to do so.

Connie Piasecki, 6115 Highway 35, said her family had been in the septic business for many years. There was not a problem with septic systems, no matter what the water table was, if they were properly installed and the leech fields were properly installed. She didn't think that should have been a concern for people there. Both of these parties were responsible people that were not going to put in shoddy workmanship for something that important.

**STAFF
REBUTTAL**

Smith noted all of the photographs and most of the discussions regarding the wet meadow were on the Palmer property and most of the references were to the Stoddard property. This particular application was the Shagagi property on the north side of Drew Lane and the wet areas were on the south side of Drew Lane. All of the development would be on the rise on the property. He referenced the photos handed to the board and spoke of the location of any development. There was a condition for the septic disposal systems being brought up to the standards of the Department of Environmental Quality (DEQ) and Environmental Health Services. He stated, in his experience, he could rely on them to account for shallow groundwater and the systems being suitable for the area or they would be denied. This application is not for a home occupation or for a business. It's for a retreat center characterized in his application materials and in conversations with staff. It is a center for religious and spiritual practice and meditation. There would be no charge to use the facility its donation only. Staff recognized and acknowledged the traffic. He doesn't feel it would be much of an impact in terms of volume of traffic. Staff had conditioned this proposal based on anticipated increase in dust. It could be mitigated by a dust treatment plan and Drew Lane could be improved to the standards that it currently exists or at least the board could condition it further to be brought up to 20 feet like the rest of Julian Lane. This is a permitted use within the zoning district and staff doesn't anticipate any noise other than vehicles coming and going. There would be no economic aspect to this proposal. He referenced a letter from the ambulance service regarding the roads, stating the roads were adequate. In any case, there was a condition the roads be brought up to standards. The access issues were a civil matter between parties. If it were determined through the legal process there was no access then there would be no access. Not having any documentation at this time, we had to assume everyone uses the private road but in a public manner to date, and until somebody says otherwise that could continue.

**APPLICANT
REBUTTAL**

Shagagi said he thought the problem was people were afraid of the unknown before anything starts. He was not having a bar and grill restaurant with loud music while dining. Retreat meant coming to a place of nature and being quiet. No talking allowed. Speaking was not allowed even while eating, they practice in silence. The whole idea of a Christian Mystic Center is to practice something going inward; no outward expression allowed. As far as the food facility, there would be no big meals, only fruits, vegetables and nuts. There would be no sanitation issues. He spoke of Drew Lane being on his property and the easements given to four of the neighbors to use. It had already been discussed between the Stoddards and him to widen the road to county standards. As far as the septic system they would have to meet the condition that requires DEQ and Environmental Health to approve it. The cabins would not be for partying. They would be for people to take a nap or sleep overnight. They would be very simple, very rustic. The wetlands would only be an issue from approximately mid-May to mid-June. He was not inadequate to think he would build on ground that would be soaked. He doesn't want to hurt his neighbors by creating something that doesn't promote harmony. He invited the neighbors to come to a sitting. It was not about noise, it was about creating harmony with nature. He was trying to have a simple setting a few people could come and be still. He promised his neighbors if there were any problems he would fix them. This was seasonal, eight to ten people at a time; he would make sure of that. The cabins were for two people. They practice quiet. They don't want to disturb the nature around them, they teach exercises to lose their mental and emotional distress so people could listen more to nature.

**BOARD
DISCUSSION**

Hash said it's true that granting a conditional use permit was a privilege and the board would only allow the use if it met all the requirements. The requirement most people spoke about at the meeting were the immediate neighborhood impacts such as traffic, noise reduction, wetlands, and access. He said he recognized the impacts the neighbors were discussing, one of which was the wetlands and how the board would address the issue. The board has dealt with wetlands in the past and at least in theory the Department of Environmental Quality (DEQ) is there to protect those wetlands and any septic systems coming in. He had concerns about DEQ and how they investigate and how they are run. He would ask the neighbors what additional protection they felt they needed other than DEQ. The board would put very tight restrictions on properties to help mitigate the impacts. He felt the applicant spoke from his heart saying there would be no noise and he would like to live in harmony, but he may not always be the owner of this property. The board, if they were going to grant the permit, had to try to safe guard the neighborhood. He agreed the document said adequate access but the board was used to that term meaning physical access. As staff pointed out, they truly had a civil right to bring an injunction to stop the access. There was no way the board was going to decide if the document was for legal

access or not. He asked Kaplan how the board could deny the applicant access because wetlands may or may not exist when there was a department out there that was supposed to protect these sensitive zones and was not going to allow a septic system if it would adversely affect these sensitive areas.

Kaplan responded saying the board had to have findings-of-fact even in areas requiring expertise. The board had to use their common experience and make these decisions; they could not pass it off to DEQ. The board had to look at the neighborhood plan which was very specific to not construct in the wetlands.

Hash said he was looking for something specific on this issue. The board may add an additional condition stating there would be no system in place that would have any adverse affect on any wetlands.

Kaplan said he wouldn't deny the board could probably conjure up conditions to satisfy that.

Hash stated all applicants were not going to bring in an expert hydrologist. The planning office guides the board regarding issues and placing conditions on applications specific to each proposal.

Kaplan agreed and asked if there were a timeline. He wanted to know if the board had to decide at the meeting or could they have a committee or workshop where the neighbors could get together with someone from the board and the planning office to try to come up with some conditions that would make everybody happy.

Hash said what they had done in the past was, they came to a spot where the applicants as well as the people in opposition, thought they could sit down and work out issues they were all comfortable with and then bring it before the board. The board could table the action based on that. He thought that would be wonderful if they could all do something like that. They had about five different concerns; noise, lighting, roads, traffic and wetlands, on both projects. If it were something the neighborhood would like to do, sit down with the applicants and see if they could work something out, the board would not have to accept it but they would certainly consider it.

Kaplan thought it was a good idea and stated the noise situation was more of a concern on the next application. Sitting down and trying to work out conditions on both of them to make everybody happy was the way to go.

Hash said it would have to be something the applicants agreed to do.

Kaplan asked if there were a timeline.

Hash said no and what would actually happen was they would have to come back to another meeting.

Stoddard asked what the board was discussing as he was the next application before the board.

Hash said the thought was perhaps both applicants could meet with the neighbors to see if they could hammer out a solution to this that the applicants would accept; in other words, what type of conditions would be placed on the applications.

Stoddard said no, that was not fair. He wanted his application to be heard separately from this proposal.

Kaplan said the point was the board may deny his application so this would give him the opportunity to sit down with the neighbors to try and work it out so everybody was happy.

Hollinger asked Sahgagi if he would be interested in stepping outside to speak with the neighbors.

Shagagi said they talked about this in a previous meeting and he spoke about the noise levels. There was no way the noise would carry out to any of the neighbors.

Hollinger spoke about the options that were already out there for an AG-20 zone. A fair number of the permitted uses would be seriously affected by traffic, noise, and water. He gave an example of a permitted use being dog kennels. Really, if you just wanted to have more horse pasture you could cut down all the trees and then have serious run-off problems. There was some concern there about what the alternatives were. It could just be a home and everybody could live happily ever after, but that's not the way it is. They could have a nursery and landscaping business there, where they would be dumping fertilizer all over everything. Those are all permitted and we wouldn't even be having this meeting. The conditional use was one of those things where, unlike a dog kennel, the board had the opportunity to place some conditions out there. That was one fortunate thing and they got to have discussion about the roads and noise.

Hash asked the board to talk about the five issues to flush out some details. One that concerned him was the noise, obviously not from this applicant, but possibly another owner. He asked staff for a condition regarding noise so it does not adversely affect the neighborhood.

Smith said staff typically limits the hours of operation or active participation that would create noise.

Hash wanted something beyond that being it was in a residential neighborhood and people could make a lot of noise during the day.

Kaplan read a condition he drafted for the board.

Harris read a condition to help alleviate concerns regarding noise levels. *No noise related to the permitted use shall leave the property at any time. Any activity using speaker systems shall be prohibited.* Staff would monitor that through the neighbors' complaints.

Hash said another issue was the traffic on the road.

Kaplan stated BLUAC wanted the road widened to county standards.

Smith said both parties agreed to the condition. Each applicant would be responsible for the whole thing and would have to work that out among themselves.

Hollinger said the condition could state the applicant and the adjoining neighbor, Stoddard, mutually agreed to work out the widening of the road.

Hash asked Mr. Stoddard if it was agreeable to him.

Stoddard commented he was not in favor of this application but he was in favor of the road being widened and improved, he had already agreed to it.

Hash said the other issue he had written down was the wetlands and aquifer.

Harris said there was a condition they would have to come back in for a rent or lease plat. It would give staff another opportunity to review the proposal. He liked the idea of spring boarding the conditions so if you had a condition stating there shall be no facility or other structure built in an identified wetlands, staff could take the condition and apply it to the for rent or lease application. They would have to demonstrate they were in fact out of any wetlands otherwise they wouldn't be in conformance with the condition and the permit would be invalid. We have a definition for jurisdictional wetlands.

Hash asked if the board could also include something regarding adverse affects on the wetlands.

Harris said they could require a wetlands delineation report to accompany the application for rent or lease. The board could also ask for a wetlands impact report for staff's review and it would all be made available during the public process. Staff would look at it to make sure it met any criteria.

Hodgeboom said a septic system could be designed to not adversely affect the shallow aquifer. In order to design it right you have to know the maximum capacity. The condition should specify the maximum number of clients per day and the septic could be designed to accommodate for that. The limit ought to be what would fit best with the rural character of the neighborhood.

Smith explained condition number three stating the applicant would have to go through quite a process before he could commence building. All of the issues being brought up as concerns regarding this operation would be covered under the process of going through subdivision for lease or rent. It's the same process you would go through for an RV Park or campground.

Harris didn't have an issue with a condition saying no building or other facility shall be located in the wetlands or adversely impact any wetlands or shallow groundwater system.

Hash asked Hodgeboom what he was asking this applicant to do because of extreme fire conditions.

Hodgeboom said it seemed to him 20 people was too many for the character of the neighborhood. He thought 8-10 people a day would be reasonable.

Shagagi said not everyone would stay overnight.

Hash asked if he would be opposed to limiting the number of people during extreme fire hazard danger.

Hollinger wanted to know what the sciences behind Hodgeboom's numbers were.

Hodgeboom said it was basically the Flathead Development Code definition of a home based business.

Harris read a condition he thought might satisfy the board. *No more than 8 overnight clients or more than a total of 20 daytime clients shall be onsite at any given time.* He wasn't thinking in terms of the extreme fire hazard danger, he was thinking more in terms of general impacts to the neighborhood. We deal with fires, not in limiting numbers of people; but requiring defensible space around structures and fuels reduction in areas where there were no structures would help to reduce the risk of fire.

Smith said it could be more fire safe and he thought the applicant would be willing to reduce the fuels and meet fire safety standards around the occupied structures.

Harris said the second access was an important part of emergency escape during a fire. That was not always available and there were times when there were other ways to protect people. They could create emergency areas where people could go to safely get away from fires. There have been, on occasion, other options considered in lieu of a secondary access.

Hash said he didn't think the board had enough information to make the decision what was fair and reasonable, safe or not safe.

Harris said the board could require a site designated as a safety zone.

Hash asked Stoddard why he was not in favor of this application.

Stoddard said it was because it totally impacts what they were trying to do at their location. It was amazing to him these two applications came up at the same time.

The board and staff discussed building in the wetlands and the affect on the shallow aquifer.

Klempel asked staff if the application met the parking requirements.

Smith said the applicant had to meet the requirements for parking as part of the rent or lease application.

MAIN MOTION

Hash made a motion seconded by Wagner to adopt staff report FCU 08-15 as findings-of-fact with the recommended conditions. (#1-#12 excluding #9 because the applicant was not proposing any additional lighting).

Additional conditions:

No noise related to the permitted use shall leave the property boundaries at any time and there shall be no amplification systems.

The applicant shall improve Drew Lane to county standards. If he wishes to share the cost with other property owners it is his choice.

Within the wetlands there shall be no structure building in the identified wetlands as defined by a delineated wetlands report and the use shall not adversely affect the shallow aquifer or the wetlands. The applicant will provide the delineation wetlands report prior to submittal of any for lease or rent application.

There will be no more than 8 overnight people or 20 daytime clients on the property.

**BOARD
DISCUSSION**

Klempel said she didn't feel a retreat center was in character with the neighborhood.

ROLL CALL

On a roll call vote the motion failed on a 2-1-1 vote with Klempel dissenting and Wagner was abstaining.

**BOARD
DISCUSSION**

Wagner stated he liked what Hash had proposed which was tabling the item until the applicant could get together with the neighbors and try to work through some of the issues. There was too much emotion on this for both sides.

Hash said they could not force the applicant to do that. The board could not table it and force the applicant to go back and talk with the neighbors.

Harris said if there was a denial the applicant could not re-apply for a conditional use permit, for the same activity, for one year.

Hollinger asked if the applicant could withdraw his application at this point in the hearing.

Harris said he could not. His application was essentially denied.

Hollinger said it was a motion to approve that failed not a motion to deny. The application was in limbo. The board needed to address it in the form of a denial or a different approval.

Harris said they could continue it as well if the applicant were willing to continue the proposal until the next available meeting. There would not be another public hearing as the board had already heard the testimony from members of the public. Staff would offer to facilitate any discussions between the applicant and the neighbors as long as the neighbors didn't gang up on the applicant. There had to be some equity there and staff would be willing to sit down and work with both sides.

Hash asked if the board were to consider the proposal at the next meeting would Sagami be able to participate in the discussion.

Harris said if Sagami reviewed the DVD and all of the supporting information, and he felt he had enough information to participate, then he certainly could do so. If he didn't feel comfortable because he missed the public hearing and the discussion, he could excuse himself.

Hollinger clarified that at the next meeting this application would be an agenda item for discussion and a vote.

Harris said staff would do a follow up staff report. We would not amend the staff report in front of the board but rather it would be

supplemental information.

Kaplan wanted to make a statement for the record. He said he didn't think the board could do this. The board just denied the application so they could not just bring back an application to the next meeting the board just denied. There was a process in statutes, it's not just a local thing it's in Montana Code Annotated he has to wait a year. It's been denied, it's over.

Hollinger said the motion was to approve and it did not pass. The board had the ability to make another motion worded differently that would perhaps have Wagner or another board member vote differently. He didn't see it as a denial he saw it as a no-vote on approval.

Kaplan said it was effectively a denial.

Hash said his motion did not pass so the question was did they have any other motions. If the board didn't have any other motions it would effectively be a denial unless the board decided to table it or continue the application.

**SUBSIDIARY
MOTION**
(Reconsider)

Wagner made a motion seconded by Klempel to reconsider the application.

Hollinger clarified they were reconsidering a vote not the previous motion.

The motion passed by quorum.

**BOARD
DISCUSSION**

Hollinger said they could now make a motion to continue if somebody chose to.

Harris thought it would be appropriate to have the applicant agree. To continue something the applicant or the neighbors are unwilling to meet on would be a waste of effort. If that's the case the board might as well have it done that night

Hollinger said if they made a motion to continue and nobody had the enthusiasm to work on the proposal it would be done.

Hash said historically the board had only done this if the applicants were in favor but that doesn't mean the board has to do this.

Hollinger asked the applicant if he would like the board to make a motion to continue.

Shagagi said sure.

**SUBSIDIARY
MOTION**

Klempel made a motion seconded by Wagner to continue the application until the December 2, 2008 meeting.

**BOARD
DISCUSSION**

Harris reiterated if Sagami reviewed the DVD and all of the material and felt comfortable in participating in discussion at the December meeting it would be his call. If he doesn't feel comfortable then he should step out of any of the discussion and the voting.

Kaplan said it seemed pretty subjective for a rule of order.

Harris said it was the best we had and we had cleared that through the county attorney as we had this situation come up on a different board. Staff felt comfortable this was appropriate and we leave a lot of discretion to the board members because they have a high degree of integrity. They wouldn't participate if they didn't feel they understood what was going on.

ROLL CALL

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Harris clarified the board would not reopen the public hearing on December 2, 2008. The meeting would be for board discussion and action only. If the board had any question regarding something they needed to ask a member of the audience, anybody who was there would be able to participate in that way. That would include the applicant. He could only participate if the board directed a question his way.

Hollinger stated the applicants' participation would be through the planning office and the supplemental report.

Harris said there could be no further information submitted. If there were additional information submitted staff would have to review it and make a recommendation to the board as to whether or not it constituted new information. That could change their decision based on the information provided in the public hearing. If that's were the case they would have to hold a subsequent public hearing on that information so we do not want to accept any new information. The board could still ask questions and receive information from the public we just don't want to get notebooks of new information that may require additional public review.

**CONDITIONAL
USE
PERMIT/CRAIG
STODDARD
(FCU 08-13)**

A request by Craig and Dana Stoddard, for a Conditional Use Permit to operate a retreat center (yoga, art and nature camp) on their property within the Bigfork, AG-20 (Agricultural) Zoning District. The property is located at 500 Wild Swan Trail.

STAFF REPORT

George Smith reviewed Staff Report FCU 08-13 for the Board.

**BOARD
QUESTIONS**

Wagner asked about the hours of operation; there were two different references in the staff report.

Smith said he put the standard condition in case the applicants are not the only owners.

**APPLICANT
PRESENTATION**

Craig and Dana Stoddard, 500 Wild Swan Trail, stated they were there to basically come into compliance with the children's day camp they were operating. It is two weeks out of the year at the present time. The activities are from 9:00 a.m. until 3:00 p.m. for one week in July and one week in August. They were asking the board for an additional week for special needs kids somewhere between July and August. He was glad the wetlands issue came up because it really does not apply to them. They were not building any more buildings; the buildings already there were what they were using, they were not asking for any new construction. All of the property had already been approved by DEQ and they had permits for the septic system, pond and waterfall. They also had the approval of Environmental Health for the additional 30 feet of the laterals that would be increased in the existing location where the studio is right now. If they were to get approval for the conditional use permit that would be the next step and that's how it would be addressed. Their well is 200 feet deep and they are on 20 acres bordering state forestry land. For any type of emergencies they have huge open areas where a helicopter could come in. Some of the larger issues that were brought up were addressed at the Bigfork Land Use Advisory Committee meeting (BLUAC). They agreed with everything BLUAC had put together. Some of the main issues were the increase in traffic and dust. The last session they had they chartered a bus to alleviate traffic and dust. They were happy to comply with any of the dust issues the bus generated. They had already agreed to widen the road in the area. They were not interested in getting large. They had a yoga studio in Bigfork for approximately three years. That's where the kids program got started. They lost their lease and it ended up being a good thing. They found the property they currently own and thought it would be ideal for the program. He reiterated they wanted to limit the camps and put something in writing as far as those limitations. One of the other main issues was noise. They were not running six hours of recess out there. They had very structured sessions in a classroom type setting. They were teaching art and also have science and nature hikes out behind the property. There were many activities these kids did while they were out there; it's not just six hours of noise. Their building is 80 feet from the fence line which borders the horse meadow. From there it is over 700 feet to the existing house which had been a rental property ever since they've lived there. It was brought up the renters were going to leave because of the noise but they knew the people that rented there and it was not the case, they wanted to stay. This particular neighbor, the one complaining, doesn't live there so they didn't understand how the noise could be an issue for them. The same neighbor even said at one point

they no idea the camp was going on, and this was after the camp was over. Their grandchildren actually participated in the camp the first year. We hope to get approval to do this specific activity. The kids' camp is the most important thing. It's a way of giving back to the community and it's something the community needs. They had sponsorships for these kids and were willing to set a limit of 30 kids and 3 sessions. They wanted to share the property with kids who would appreciate extending the lessons throughout the day. Without any advertising they have filled every session. This was the first year they actually had to turn kids away. They were bringing kids out there who couldn't afford it and had special needs that yoga had really helped. They teach yoga, art and nature activities. They gave an example of a daily routine. They had received a grant for children who couldn't afford it and they sponsor kids themselves. They also had a couple of counselors and some adult helpers. Everybody was so well behaved; their whole theme is kindness and non-harming. That's the way every session has been and they had no intentions of changing it. They would want to add a very small session for special needs children. They had to turn kids away and could have had enough for a whole other session of 30 kids. The participants were not just from the Bigfork area, they got them from all over Montana and from around the world. They had children from Amsterdam, Australia and England. The participants planned their vacations around the dates of the kids' camps. Nobody stays on the property. This is not an overnight camp.

Wagner asked if any of the special needs kids were in a wheelchair.

Stoddard responded yes.

Phil Timm, Fire Chief for Glacier International Airport, spoke on behalf of the Stoddard's. He had been to the property many times. He took many classes there and his four children all attended. His oldest son helped out at the camp. The camp had changed them. They loved it and appreciated nature. He said he was not an expert or professing to be an expert but he believed the property was extensively fire safe. The entire eastern boundary of the property was all clear cut. The area around the studio had been extensively fire safe as well. They had taken a lot of steps for beautification and fire safety. If we talk about egress we would have to talk about every other road in the county. If we talk about fire danger we have to talk about residents who lived there full time. They were just as much at risk and we would evacuate them during extreme fire danger as well. Areas of refuge were set up in those valleys in the event of a fire. There was a place where people could seek refuge. They had addressed those issues. There was ample opportunity for ALERT helicopter to land out there if need be. Bigfork ambulance is staffed all day long with a full time crew during the time of operation of the camp. From a fire safety standpoint we know the letters are pending from the fire chief who had already inspected the property. This was not a heavily wooded area around structures, that

was not the case.

Connie Piasecki, 6115 Highway 35, wanted to say in this time when we have so much strife and violence and so much unrest in our economy she felt blessed to have people in the valley that were willing to assist young people in having a different outlook, a different way of looking at things. This was a blessed thing for all of us and the children. What a beautiful thing to have this type of energy surrounding us. Our children are so at risk and to have somebody willing to take time and share their lives in this way, she couldn't imagine anybody could be opposed to that.

**PUBLIC
COMMENT**

Cliff Palmer, 355 Wild Swan Trail, wanted to clarify that nobody in opposition to this is in opposition to yoga camps. They just thought this was the wrong location. They had the same people in opposition except for one. All the people on Drew Lane don't want this type of business in the neighborhood. Their thought was it does generate noise and the residents should have some input some effect on the board about their concerns. His personal concern was that this was done without a permit and he was concerned about the expansion of the business. The Stoddard's had a web page that actively advertised their classes, workshops and retreats. Parking was a problem there as well. He couldn't imagine the Stoddard's not expanding their business. He had some of the same concerns as the previous application but his biggest concern was even though this was a great thing, they should find someplace else to do this. Most camps have 100-200 acres with a buffer between the neighbors. The residents were opposed to this and the board really needed to take that into consideration.

Cheryl Palmer, 355 Wild Swan Trail, said they bought their home for retirement. They loved the mountain views, the peace and quiet, the geese that visited their pond and the tranquil setting of the rural neighborhood. Three years ago all that changed dramatically. The encroachment of loud noises and increased traffic had changed the whole neighborhood. Retreats and camps needed buffers to insure the rights of others. Most retreats and camps are in remote areas and have huge buffers. The yoga studio is 50 feet from her property line and there are no trees. They've trashed our property. Maybe the board thought children's noises were fine and nothing could be sweeter than children's voices, but she liked the quiet and solitude. She liked birds chirping and singing better than hearing all that racket all day long and into the night. Their tenant called 911 because of chanting and drumming and the noise drifted over to their property and they couldn't take it so they were leaving. They were leaving because they had rented a place for a nice quiet environment and this was what they had to put up with. She was the one impacted the most. She was over at the property five hours a day because she trained horses. She was over there every single day, twice a day feeding the horses and she felt she was over there more than most people lived in their homes. She

wanted to hire a noise consultant who would measure the decibels. The noise was horrendous. She spoke of a gathering where she counted 40 people with the cars clogging the area. She stated it goes on all the time, not with just the camps, but with all their other activities as well. She showed pictures of the children and said it goes on the whole summer. There were no trees because it was wetlands. If the definition of noise stated it shouldn't leave the property then the board better stick with the definition. Its 500 feet from her house to the edge of their property. She spoke of the depreciation of her property and stated they might as well hire Greyhound Bus because they had gatherings of 40-50 people all the time. She had been to some of those gatherings. They were minimizing everything. The Stoddard's say they only had two little classes and only 8-10 cars. She showed a class schedule and stated they had so many classes you couldn't even keep up with them. The real problem was the noise was affecting her property and her peace and quiet and they just trashed her property. She was not against kids she was an elementary school teacher for the public school system and her husband was a school psychologists for 30 years with problem children. They know the nature of kids and how was the board going to mitigate that. They have their whole activity center right along her property line and the noise drifted up hill.

David Feffer, 650 Laitgo Lane, stated he became interested in this camp and checked it out for his sisters' children. He spent an hour and a half at the camp and he noticed the kids were very well controlled; there was not a lot of noise, virtually no noise. His wife's 80 year old aunt and he both commented on how quiet it was even at the parking area. This was a time between activities. This was something that was very positive.

Karen Lail, 439 Grand, helped at the camp this past summer. This was an amazing activity for kids. She was amazed at how 30 kids were totally engaged in something other than video games and rough housing. This was a type of activity that brought harmony in the world and was a great community service.

Bret Holmquist, 115 Ezy Street, was a guest instructor at the camp last summer. He wanted to speak to the quality of the experience and to stress the experience that came out of the camp was not just tied to what they did but was also tied to the land. The amount of expense, time and thankless labor of love the Stoddard's put into the space to create the quality everyone was talking about. From his professional perspective as an educator this was a top notch experience that couldn't be replicated easily.

Naader Shagagi, 199 Drew Lane, said he never heard any noise and he lives right next to their property.

Jessica Beasley, 622 Wild Swan Trail, said it was not the camp, she thought that was wonderful. This was not about the camp it was about the business on the property. It was true the internet advertised classes, seminars and workshops. This wasn't about the three weeks in the summer. If the camp was approved who was going to check on the un-regulated expansion of this business. Her concern was that it was not in keeping with this neighborhood, the sense of peace, seclusion and privacy. It was not that they don't want to be neighborly it's just they thought they were buying property that was not going to have businesses or retreats. We are not cruel people, we are not against it. This has been misrepresented because it was not about the two weeks and it's been operating for the last two years.

Fred Hodgeboom, 1125 Whispering Pines, was concerned about this particular application because he felt it was being done because of violations. It seemed to him the business had been a violation since the day the property was sold and the applicants misrepresented it stating they were buying it for a residence. After they bought it they started to develop it and started a commercial operation. Adverse impacts have already happened to this neighborhood. None of the neighbors like what is going on. It violated the trust of the Bigfork Neighborhood Plan for 20 acre rural residential. This permit application was simply trying to legitimize an illegal operation. He fully supported the kind of thing they were doing but they did it wrong. There aren't enough buffers so the neighbors have to pay the price. It's not fair. He felt the business was illegal as it's been operating and the cumulative effect would change the rural character of the neighborhood. It was in violation of the Bigfork Neighborhood Plan and in violation of the definition of a home occupation. No permit should be granted to continue those operations that continue to change the rural character of the neighborhood.

Eric Kaplan, attorney, stated he would like his previous comments incorporated into the record for this application as well. There were legitimate concerns here. These concerns were very real to them. It was a great plan but it does infringe upon neighbors rights. He referenced the Bigfork Neighborhood Plan and stated the board needed to look at things like noise in this setting. Something should be done for things like noise and hours of operation. The application proposes hours of operation from 9:00 am until 3:00 pm and they would like to keep it at those hours with no large scale late night activities. The neighbors would like to keep it at two sessions and limit the number of children to 30 maximum. He pointed out it was more than just a camp they have lots of classes and seminars daily and year round. It's not just about the kids. Be true to the neighborhood plan and respect the rights of the neighbors. The board should impose pretty significant conditions to take into account the concerns of the neighbors.

Thomas Reifers, 3165 Foothills Road, is a licensed professional therapist. He works with families and children and he referred some of them to the camp and found it very beneficial. He had also participated in helping the children at the camp and had the opportunity to see how they interacted and participated. They were very well behaved and organized and there was enough adult supervision. As far as noise, for this many children, there was not excessive noise. They had a lot of different parts of their program that really engaged and involved the children in a lot of healthy interactive activities. He thought this would be a great addition to the community and it served a larger community in a positive way. These were the children that are our future and that should be taken into the utmost consideration.

Bruce ?, 22056 East Lakeshore, keeps his horses at Jessica Beasley's house and had heard the noise. Her house is much further away than others. He thought all the testimonials and legal points were fine but the bottom line was this is a rural area and these people wanted that when they move there. Now they were going to have these businesses on these properties that change the whole mental idea of these properties and lifestyles. It's not right to change that. Take the kids somewhere else. They indicated there would be very little impact on wildlife but there were already impacts. They were losing it all and the board needed to draw a line.

**STAFF
REBUTTAL**

Smith commented there had been a lot of very different perceptions of the impacts of what was going in here and he didn't know how to address that as staff. This was initiated as a result of a violation complaint. The ongoing activities seemed to be compliant with the definition of a home occupation and it appeared the impact creating the problems was the summer camps for the kids. That was what the application was for. It was not the same as the board rubber-stamping an illegal activity. It's a common part of our planning process we remediate violation through compliance to the conditions. The activity is generally supported. One of the goals of the neighborhood plan is increasing cultural activities through the community. It was obvious to him this was an appreciated cultural response. It's up to the conditions to mitigate the immediate impacts in order to accommodate community wide benefit. None of the activities on the property affect the proposed wetlands. Environmental Health Services has approved all of the facilities in place now and if additional facilities are determined they would also have to be approved.

Klempel asked if Smith had measured how far the studio was from the neighbors' property.

Smith stated he had been on the property and it was farther than 50 feet, assuming the property was the fence line. The setback requirement is 20 feet. The geographical information system (GIS) is

fairly reliable and it does indicate it is approximately 700 feet between the activity area and the residence of the neighbor to the south.

**APPLICANT
REBUTTAL**

Dana Stoddard said the internet had a lot of listings of types of classes they do not teach. They teach two classes a week, on Tuesday and Thursday nights, that's all they were doing and that's all they were planning on doing. They have, for those two classes a week since they opened a year ago this December, the average amount of cars is five. That's all within the restrictions. When they opened they had a big workshop, they don't plan on doing that again. They wanted to comply and keep the neighborhood happy. They had one small workshop planned and they keep it at a minimum. They had nothing else planned. She said they would be willing to put that in writing that they could have a certain number of workshops and classes a week. They both have full time jobs and this was something they do on the side. It was much less than had been represented.

Klempel asked how many special needs students she taught.

Stoddard said she had three or four in this particular class. She does teach an ongoing series for special needs kids, once a week.

**BOARD
DISCUSSION**

Wagner asked what the workshops entail as opposed to a seminar.

Stoddard said they have a teacher come from California, that has an existing group of students, and stays two to four days and they have three classes during that time, once a day.

Klempel felt the board needed to keep the hours 9:00 am-3:00 pm. She referenced a class schedule she had been handed and stated some of those classes go clear into the night.

Hash said he saw a difference between this one and the other application as this one was a home occupation. He wasn't sure if it was really within that definition. He thought this was too much use for a home occupation. He was not including the two or three week special camps. He gave an example of a home occupation the board discussed in the past that had a UPS truck pick up things once or twice a week and remembered the board members were concerned about that. Now they were talking about a great number of people coming most evenings of the week. The board just put a condition on the other application, because they didn't want to adversely affect the neighborhood, the noise would not leave the boundaries. He spoke of this being a commercial development on this residential property and the neighbors were complaining of the excessive noise. It's a difficult situation. Limiting the weeks in the summer initially seemed like it wouldn't be an impact. But another issue was that some people thought having this next door would depreciate the value of their property. That was definitely something to consider.

Wagner stated that being a retired educator he didn't see how you could keep 30 kids quiet out in the open. He didn't feel the board was against that type of program but maybe the location wasn't a good place.

Klempel said listening to children from 9:00 am until 3:00 pm is one thing and three weeks out of the year isn't a whole lot of timeline. But the chanting and the drumming could be eliminated. She wouldn't want to listen to that late at night.

Hash said the only other thing the board could do was to put the same condition on this application so they would run their camp so there is no noise from the children.

Hollinger said kids camps needed to be in a rural setting. They can't take it to town or to the park because the park wouldn't let them run a commercial operation there. The other thing was, nobody could buy 100 acres of land to put a camp on, as it's not even economically possible on 20 acres. To operate a camp on 100 acres would be impossible. He knew there was always an occasion where there would be noise from something, but the board could address those with conditions. Having small businesses in the valley is what was going to keep us alive and having people experience the beautiful place we live was also part of it.

Hash spoke about having conditions for limiting the number of children as well as the hours of operation and the traffic.

MAIN MOTION

Hollinger made a motion seconded by Wagner to adopt staff report FCU 08-13 as findings-of-fact with conditions. (#1-#13 as presented in the report as well as the 6 conditions submitted by BLUAC).

Hollinger amended his motion seconded by Klempel to include changing condition number 11 to the hours of 9:00 am until 3:00 pm.

Hollinger amended his motion seconded by Wagner to change condition number 3 of the BLUAC list to state they shall be limited to no more than 30 children.

BOARD DISCUSSION

Hash said the only point he would make was that he wanted to respect the neighbors concerns about keeping it to two sessions. He was not going to vote in favor of the motion because he felt it was a substantial impact to the neighborhood and it does depreciate the property values.

Wagner said he would object to that because he felt they need the one week for special needs kids.

Klempel spoke of the internet advertising and asked the board members if they needed to add a condition stating they could not do

any internet advertising.

Stoddard said the information the board received was very old. The only thing on the internet was the class for Tuesday and Thursday night. They will take off everything that doesn't apply to those two classes. On the internet were pictures of the kids so everybody could share and see the sessions and the camp. It's not advertising it's there for information.

ROLL CALL On a roll call vote the motion passed 3-1 with Hash dissenting.

OLD BUSINESS None.

NEW BUSINESS Harris went over the schedule for the next month. The board will meet on Wednesday November 5th as their regular meeting day is a county holiday. He spoke of the fee increases adopted by the commissioners.

ADJOURNMENT The meeting was adjourned at 10:45 p.m. on a motion by Wagner.

The next meeting will be held at 6:00 p.m. on November 5, 2008.

Scott Hollinger, President

Mary Sevier, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 11/5/08