

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
FEBRUARY 13, 2013**

**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, Greg Stevens, Noah Bodman, Jim Heim, Jeff Larsen and Ron Schlegel. Robert Faulkner had an excused absence. Gene Shellerud was absent. BJ Grieve and Alex Hogle represented the Flathead County Planning & Zoning Office.

There were 51 people in the audience.

**APPROVAL OF
MINUTES**

Larsen made a motion, seconded by Schlegel to approve the December 12, 2012 meeting minutes.

On a roll call vote the motion passed unanimously.

**ELECTION OF
OFFICERS**

Hickey-AuClaire pointed out to the board Donna Valade was the board secretary per the Flathead County Planning Board's bylaws.

Schlegel nominated and Heim seconded Larsen for vice-chair.

Hickey-AuClaire asked Larsen if he didn't want to serve in the position.

Larsen said he was not opposed to the position.

The motion passed unanimously.

Larsen nominated and Stevens seconded Hickey-AuClaire for chair person.

The motion passed unanimously.

Larsen will serve as vice chair and Hickey-AuClaire will serve as chair.

**PUBLIC
COMMENT
(not related to
agenda items)**

Joe Unterreiner, president of the Kalispell Chamber of Commerce, spoke about the Spartan race, when it would be, the fact it needed a conditional use permit and suggested the board craft an application which would be geared to events and not require as large of an application fee. He shared a similar event, the Dragon Boat Race, and gave the board a handout concerning

economic impacts of such events and the fact they were looking for economic events which pulled in participants from out of market areas. He talked about the benefits of having these events and offered his help in working up an application with a more modest application fee. He gave the board another handout which described other events the chamber was looking to promote in the valley. He said the chamber was neutral on the application tonight, but he was encouraged the developers were looking at putting such an investment in the area. He thanked the board for their time.

**ROSEWATER
PUD AND
SUBDIVISION
(FPPUD 12-03 &
FPP 12-02)**

A request by Score Management, LLC for Preliminary Planned Unit Development (PUD) and Preliminary Plat approval of Rosewater Subdivision, a 58-lot residential (46 single-family lots and 12 townhouse lots) Major Subdivision. Containing 154 acres, the subject property is located within the Highway 93 North zoning district and is zoned SAG-5, Suburban Agricultural. The PUD/subdivision would include a 27 acre man-made lake and the Lots would use five proposed onsite wastewater treatment systems and a proposed extension of the Evergreen Water & Sewer District's public water supply system. The property is located at 1535 Rose Crossing.

STAFF REPORT

Hogle reviewed Staff Report FPPUD 12-03 and FPP 12-02 for the Board.

**BOARD
QUESTIONS**

Heim and Hogle discussed where the memo concerning the contingency plan if the lake liner system were to fail was located in the informational packet which had been sent to the board.

Valade made physical copies for the board of the memo which had been included on the informational CD in the packets.

Stevens and Hogle briefly discussed the depth of the lake.

Hogle went on to speak about who was responsible for future monitoring of the lake and the specifications of the liner.

Schlegel and Hogle discussed the fact there was no comments from the West Valley Fire Department.

Hogle and Bodman briefly discussed if the liner would be buried and how much material would be on the liner.

**APPLICANT
PRESENTATION**

Bill Tanner, applicant, gave a brief history of other projects he had been involved in and complemented the staff for their work. He said as applicants, they had tried to mitigate foreseeable problems concerning the application and relayed the fact he had contacted the public to find out their concerns and tried to address them. He gave examples of how the public's comments had been addressed in the project. He showed the board a brief video of and explained other similar man made lakes across the United States and in Montana. He discussed other uses for the lake such as adaptive waterskiing for disabled individuals. He wanted to thank his consultants and the work they did to make the application comply with all the regulations and requirements. He named Eric Mulcahy from Sands Surveying, Tom Cowan from Carver Engineering, Roger Noble from Applied Water Consultants and Josh Smith from CMG Engineering.

Stevens and Tanner discussed why the applicant went with the 30 mil liner for the water ski lake, the construction of the liner and the placing of the liner.

Eric Mulcahy, Sands Surveying, 2 Village Loop, spoke of the physical character of the application, the concern of the steep bank on the Whitefish River and how far they were from the river. He gave several examples of existing manmade lakes or ponds near the Whitefish River. He explained how the lake would be made and passed out examples of the proposed liner which had previously been in use for 5 years. They would like condition #3 for the fire department amended. They had no problem creating an emergency egress but they did have a problem going to the city of Kalispell for their approval. The application was not a part of Kalispell and they didn't want to get into a territory war. They did not have a problem with Condition #29 regarding maintenance plans but they wanted to strike the required approval from DNRC, Army Corp of Engineers, etc. due to the fact the offices did not deal with this type of application and it would be difficult to get an approval from them. He said Josh Smith could answer questions about soil. Roger Noble could answer questions about water issues. Tom Cowan could address the technical questions about the liner.

**BOARD
QUESTIONS**

Larsen and Cowan discussed at length the process of how they would monitor leakage, firms which specialized in finding leaks in ponds and how the leaks were found, how the water would be drained, the fact the buried liner was seamed, how it was seamed and how a leak would be repaired if it should occur.

They would bury the liner 18 inches deep, have monitoring for leaks and the distance from the river was enough to not be an issue. They were happy to adjust the contingency plan for leaks.

Schlegel and Cowan discussed the characteristics of the perched aquifer and the potential problems which could occur.

Bodman and Cowan discussed if the liner was separated in between the ponds and if the liner went underneath the turn islands.

Larsen brought up public comment concerning the weight of the water, shallow spring impacts, the possibility of drain field affluent migrating to the river through the aquifer and potential sloughing.

Joshua Smith addressed the weight of water and how that would not affect the slope by the river, the shallow spring impacts, and the way they were addressing the issues, the fact slope was known to have issues and that was why the applicant tried to stay away from it.

Roger Noble, 475 N Main Street, spoke about the historic water rights to the property and how the water had been used before which was irrigation and he gave specifics of how much water was utilized and how much went to the water table. He compared the irrigation use with the ski lake usage. He explained the testing which had been done concerning water issues so far and possible ways to monitor and test for problems in the future.

Larsen and Cowan discussed at length why the applicant was not hooking up to the Evergreen sewer system.

Mulcahy and Tanner discussed the issue of sound, the type of ski boats allowed on the lake and their decibel levels.

Bodman and Mulcahy discussed at length the process of going to final plat and who was responsible for the subdivision which involved maintenance before the home owners association took over.

Bodman and Noble discussed if there was catastrophic failure of the lake, how fast the water would make its way to the aquifer, the time needed for the lakes to be drained to allow for repair

and how quickly the water could travel to the river.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

Hickey-AuClaire asked the board if they had time to review the written comments.

The board said they had reviewed the written comments.

Hickey-AuClaire and staff discussed the proper procedure for public comment on the PUD and subdivision.

Andy Palchek, 2299 Whitefish Stage, suggested the applicant preemptively acquire the permits necessary to do emergency work on the lake before they were needed.

Robin Street, 1414 Rose Crossing, was against the application.

Doug Erickson, 141 Lakeside Blvd, was for the application.

Heim and Erickson discussed if there were restrictions on the boats which the homeowners allowed on the similar man made lake mentioned in his public comment.

Zac Andrews, 2150 Riverside Rd, was for the application.

Jane Burleson, 1350 Rose Crossing, was against the application.

Scott Alzbury 1306 6th Ave W #A, was for the application.

Gene Dziza, 440 Foothill Rd, was for the application.

Mark Lister, 1455 Rose Crossing, was against the application.

Wyatt Olsen, 1263 Rose Crossing, was against the application.

Laurie Alsbury, 243 McWinnegar Drive, was for the application.

Ralph Hemp, 1930 Pine Grove, was against the application.

Bill Ashe, 1870 Pine Grove Lane, was against the application.

Bob Gembolis, 1980 Pine Grove Lane, was against the application.

Bob Neitzling, 1621 Rose Crossing, was against the application.

Cheryl Ashe, 1870 Pine Grove Lane, had concerns about the time for a rapid response and the chemicals in standing water.

Mike McGregor, 2209 Whitefish Stage Rd, was for the application.

Greg Alsbury, 243 McWinnegar Drive, was for the application.

**APPLICANT
REBUTTAL**

Mulcahy said they didn't have anything to add but would be available to answer questions.

Stevens and Tanner discussed the clustering of the townhouses, the price of the infrastructure which would lead to a higher quality development and the inability of the developer to predict or have control over catastrophic events.

Stevens, Schlegel and Street discussed the slumps and sloughs along the river, the effect of the lakes on the slumping and sloughs, how far a developer needed to go and what needed to be done to avoid detrimental effects on the slope along the river and things that had already been done to stop the degradation of the slope and road already.

Stevens asked if anyone else from the applicants support team wanted to add to the discussion to help him, as a board member debating the application, out.

Smith and Stevens discussed drain fields commented on by Street for the septic system.

Heim and Cowan discussed the workings of the drain fields, the location of the drain fields, the location of the groundwater, the possibility of contamination of the groundwater and disturbances along the bank of the river.

**STAFF
REBUTTAL**

Hogle addressed concerns raised with the current status and construction of Rose Crossing Road which included the triggering of a traffic impact study. He reviewed the study for the board.

Grieve discussed at length the issue of commercial events, conditional uses and what would be needed to host events.

Heim, Stevens and Grieve discussed in depth how commercial uses could be addressed either with the PUD or a Conditional Use Permit (CUP).

Stevens and Greg Alsbury discussed the issue of people noise on the lake and if the homeowners association was going to have events at the lake.

Hickey-AuClaire and Grieve clarified the procedure for both the PUD and subdivision.

**BOARD
DISCUSSION**

None.

**MAIN MOTION
TO ADOPT
F.O.F.
(FPPUD 12-03)**

Stevens made a motion seconded by Larsen to adopt staff report FPPUD-12-03 as findings-of-fact.

**BOARD
DISCUSSION**

Hickey-AuClaire and Hogle discussed setbacks addressed in the findings.

Stevens thanked everyone who commented on both sides of the application and staff. He elaborated on his concerns which were noise, slumping and sloughs along the riverbank. He also thanked the people who spoke against the application because their comments were valuable.

Heim liked the project at first and then the comments concerning the water made him look closer at the application. He felt the chances were slim to none that there would be a catastrophic failure and monitoring would take care of any leaks which started. His concern was that the HOA would be responsible to pay for monitoring and maintenance.

Grieve pointed out the board was under discussion for the PUD not the subdivision.

The board and Grieve briefly discussed the difference concerning the water skiing lake in both.

Larsen said he would probably support the PUD because conditions could be addressed in the subdivision application. He commented on public comments which included the difference

between a PUD overlay and a zone change. He said he would support the PUD but wanted a good discussion concerning the conditions on the subdivision.

Bodman brought up the issue of if events would be held and how to address that in the PUD. He did not feel there needed to be any restrictions concerning events in the future.

Schlegel said he had known Robin Street for a long time and had nothing but the highest respect for him and his knowledge of the land. He talked about ways around the traveling of the water, the use of the liner and how far it was buried and the issue of noise.

Hickey-AuClaire and Grieve discussed how future events would be handled as things were currently written.

The board discussed if any conditions needed to be added to the PUD concerning future events.

Heim said the reason he liked the application was there was a lot of open space in the project, so he supported the application.

Grieve clarified the motion.

Hickey-AuClaire and staff briefly discussed the motion.

**ROLL CALL TO
ADOPT F.O.F.
(FPPUD 12-03)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

None.

**MAIN MOTION
TO
RECOMMEND
APPROVAL OF
CONDITIONS
(FPPUD 12-03)**

Stevens made a motion seconded by Larsen to adopt Staff Report FPPUD-12-03 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

Stevens asked the applicant if the conditions in the PUD were acceptable to them.

Mulcahy said they were fine with the conditions in the PUD.

**ROLL CALL TO
RECOMMEND
APPROVAL OF
(FPPUD 12-03)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Hickey-AuClaire clarified with Grieve there would be a public hearing at the commissioner level for the PUD but not the subdivision.

**MAIN MOTION
TO ADOPT
F.O.F.
(FPP 12-02)**

Larsen made a motion seconded by Heim to adopt staff report FPP 12-02 as findings-of-fact.

**BOARD
DISCUSSION**

The board and staff clarified procedure.

The board and staff discussed findings which addressed monitoring for leaks, boat noise impact, a contingency plan for monitoring and the agencies who were required to sign off on the plan, the possibilities of having all three sign off, possible leaks being in the hands of the HOA, the cost of fixing a leak and how the cost would be covered. They also discussed what would happen if the board were to recommend approval of the PUD and recommend denial of the subdivision and how the findings related to the conditions.

**SECONDARY
MOTION TO
(Amend F.O.F.
#27)**

Bodman made a motion seconded by Schlegel to amend finding #27 to read:

27. Considering the submitted geotechnical report recommends monitoring for leaking, and four instances of historic large scale 'slumps' are documented as having occurred in proximity to the subject property it appears there is a potential geological hazard which could arise from a detrimental leak of the proposed lake's liner system causing extreme saturation of soils around the lake. This potential impact can be mitigated with the imposition of conditions related to long-term monitoring, *long-term maintenance*, and establishment of an emergency contingency plan.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
(Amend F.O.F.
#27)**

On a roll call vote, the motion passed unanimously.

**BOARD
DISCUSSION**

The board and staff touched on several findings including the findings which concerned the fire district and noise.

Grieve summarized finding of fact #26 and brought to the board's attention the applicant had raised a concern with a condition based on finding of fact #26.

The board and staff discussed if there were any amendments which could be made to the finding to address the applicant's concern. They also discussed the relation between findings of fact and conditions, standard conditions and why they existed.

Mulcahy said the applicant was willing to meet the standards of the city of Kalispell concerning fire requirements. They did not want to get another letter from Kalispell later and have them change their mind on one of the requirements or have something which contradicted the West Valley requirements. He went on to name the standards which would be fulfilled.

The board and Grieve discussed alternate wording to the finding.

**SECONDARY
MOTION TO
(Amend F.O.F.
#26)**

Heim motioned and Larsen seconded to amend finding #26 to read:

26. The subject property is located in the West Valley Fire District and *the applicant is proposing the subdivision to comply with* ~~is also subject to reasonable compliance with~~ fire protection standards of the Kalispell Fire Department because the proposal site is within one mile from the municipal boundary of the City of Kalispell. The Kalispell Fire Department has requested a siren activated opening mechanism be installed on the automated subdivision entrance gate and a secondary emergency ingress/egress be situated across Common Area 'F' from Pine Grove Lane.

**BOARD
DISCUSSION**

The board and Grieve clarified the wording of the motion.

ROLL CALL
(Amend F.O.F.
#26)

On a roll call vote the motion passed unanimously.

BOARD
DISCUSSION

Hickey-AuClaire clarified with Mulcahy what the other concerns with findings or conditions the applicant had.

ROLL CALL TO
ADOPT F.O.F.
(FPP 12-02)

On a roll call vote the motion passed unanimously.

MAIN MOTION
TO
RECOMMEND
APPROVAL OF
CONDITIONS
(FPP 12-02)

Heim made a motion seconded by Stevens to adopt Staff Report FPP 12-02 and recommend approval to the Board of County Commissioners.

BOARD
DISCUSSION

The board and Hogle discussed concerns with the requirement for the emergency plan being approved by the Montana Department of Natural Resources, Montana Fish Wildlife and Parks and the Department of the US Corps of Engineers, which were bringing into the planning process these different departments. They discussed alternate wording which included replacing the departments with the county, where the condition was drafted from and the reason why, the possibility of having the county health department responsible for the approval of the plan.

The board and staff discussed alternate wording for the condition, who would review the plan before final plat, the process of how the planning office checked to see if the applicants had met the requirements, how the HOA would pay for the expense of the possible repairs and how to enforce a stipulation after final plat was approved.

SECONDARY
MOTION TO
(Amend
CONDITION #29)

Larsen motioned and Stevens seconded to amend Condition #29 to read:

29. Prior to final plat approval of Phase 1, the applicant shall provide an emergency contingency plan for the proposed artificial lake. ~~which has been reviewed and approved in writing by the Montana Department of Natural Resources and Conservation, Montana Department of Fish, Wildlife and Parks, and the U.S. Army Corps of Engineers.~~ The

plan shall address long-term monitoring of the lake's liner system and emergency response in the event of a failure of the lake's liner system. At a minimum, the plan should include minimum qualifications of a person or firm contracted to perform the monitoring; method(s) of lake liner repair for various forms of potential damage; method of emptying the lake which will not degrade area soils, impact area roads or adjacent properties, or cause pollution of the Whitefish River, and; establish a mechanism for financial responsibility regarding the cost of long-term monitoring and necessary response/repair of the lake liner.

**BOARD
DISCUSSION**

None.

**ROLL CALL
VOTE TO
(Amend
CONDITION #29)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

The board, Noble and Cowan discussed in detail the plan to monitor the lakes. The board and staff discussed possible wording for an amendment to the condition.

**SECONDARY
MOTION TO
(Amend
CONDITION #29)**

Larsen motioned and Schlegel seconded to further amend condition #29 to read:

29. Prior to final plat approval of Phase 1, the applicant shall provide an emergency contingency plan for the proposed artificial lake, ~~which has been reviewed and approved in writing by the Montana Department of Natural Resources and Conservation, Montana Department of Fish, Wildlife and Parks, and the U.S. Army Corps of Engineers.~~ The plan shall address long-term monitoring of the lake's liner system and emergency response in the event of a failure of the lake's liner system. At a minimum, the plan should include minimum qualifications of a person or firm contracted to perform the monitoring; method(s) of lake liner repair for various forms of potential damage; method of emptying the lake which will not degrade area soils, impact area roads or adjacent properties, or cause pollution of the Whitefish River, and; establish a mechanism for financial responsibility regarding the cost

of long-term monitoring and necessary response/repair of the lake liner. *The plan shall include a method for continuous monitoring of water level in two monitoring wells located southeast of the lake.*

**BOARD
DISCUSSION**

None.

**ROLL CALL
VOTE
(Amend
CONDITION #29)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

The board and staff discussed the relevance of condition #3, the fact it was a standard condition, what was referenced in Montana Code Annotated and the requirements for meeting Montana Code Annotated.

**SECONDARY
MOTION TO
(Strike
CONDITION #3)**

Stevens motioned and Larsen seconded to strike condition #3 in its entirety.

**BOARD
DISCUSSION**

None.

**ROLL CALL
VOTE
(Strike Condition
#3)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Grieve stated for the record the requirements for condition #3 were met in conditions #23, #25 and #26.

The board briefly discussed alternate access to the subdivision.

**ASK THE
QUESTION**

Schlegel asked the question.

**ROLL CALL TO
RECOMMEND
APPROVAL OF
(FPP 12-02)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Hickey-AuClaire and Hogle clarified for the audience what procedure the applications would follow after the planning board meeting.

The board took a 10 minute recess.

OLD BUSINESS

Grieve said the Floodplain Regulations were in effect and reviewed applications which would be coming before the board concerning updates to the regulations and also reviewed the process which needed to be followed.

NEW BUSINESS

Grieve reminded the board there was a joint workshop with the commissioners on March 13, 2013. He spoke about the new fiscal year, when it started, and neighborhood plans which needed to be updated. He spoke about LUACs which had asked that their neighborhood plans be updated.

The board and Grieve discussed what the board wished the office to work on for its work plan for fiscal year 2014, the availability of staff and the priority of which neighborhood plans needed to be updated.

Larsen wanted to update plans which needed to be worked on instead of working on plans such as the Growth Policy which was not as outdated.

Grieve and the board discussed how resources were allocated, other possibilities for the use of staff time such as updating the zoning regulations, the history of subcommittees of the Planning Board, the Kalispell City-County Master Plan, how possible text amendments to regulations were kept track of, the difference between Kalispell zoning and county zoning, the most problematic neighborhood plans which needed attention, Lakeside Community Council wanting to implement their plan and the best way for them to go about doing that implementing.

Hickey-AuClaire and Grieve clarified what the next month looked like for meetings.

Heim asked Grieve for an update on the B2-HG litigation.

ADJOURNMENT The meeting was adjourned at approximately 10:50 pm. on a motion by Hickey-AuClaire. The next meeting will be held at 6:00 p.m. on April 10, 2012.

Marie Hickey-AuClaire, Chairman

Donna Valade, Recording Secretary

*APPROVED AS SUBMITTED/***CORRECTED**: 4 / 10 / 13