

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
APRIL 9, 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 Rita Hall, Marie Hickey Au Claire, Randy Toavs, Marc Pitman, Mike Mower, Gordon Cross, Gene Dziza, Frank DeKort and Jim Heim. Andrew Hagemeyer, Dianna Broadie, BJ Grieve and Jeff Harris represented the Flathead County Planning & Zoning Office.

There were approximately 15 people in the audience.

APPROVAL OF MINUTES

DeKort made a motion seconded by Dziza to approve the March 12, 2008 meeting minutes.

The motion was carried by quorum.

PUBLIC COMMENT
(not related to agenda items)

None.

ZONE CHANGE FZC 08-02 PINNACLE PROPERTIES

A Zone Change request in the Evergreen Zoning District by Pinnacle Properties from R-2 (One-Family Limited Residential) to B-2 (General Business). The property is located at 132 Bernard Road and contains 2.469 acres.

STAFF REPORT

Dianna Broadie reviewed Staff Report FZC 08-02 for the Board.

BOARD QUESTIONS

DeKort asked where Spring Creek was in relation to the property.

Broadie showed on the map where Spring Creek was.

APPLICANT PRESENTATION

Narda Wilson, 184 Midway Dr., said the property would be used for an expansion of the existing business. The business was established prior to zoning in that area. There are a number of uses that have operated in the area. She agreed with Staff. The zone change is more conducive to commercial use than residential use.

PUBLIC COMMENT

None.

**APPLICANT
REBUTTAL**

None.

**STAFF
REBUTTAL**

None.

**BOARD
DISCUSSION**

None.

**MOTION TO
ADOPT F.O.F.**

Dziza made a motion seconded by Toavs to adopt Staff Report FZC 08-02 as findings-of-fact.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADOPT F.O.F.**

On a roll call vote the motion passed unanimously.

**MOTION TO
RECOMMEND
APPROVAL**

Toavs made a motion seconded by Hall to recommend approval of FZC 08-02.

**MAIN MOTION
ROLL CALL TO
APPROVE
ZONE CHANGE
FZC 08-01
MILDREN**

On a roll call vote the motion passed unanimously.

A Zone Change request in the Bigfork Zoning District by Stan Mildren from SAG-10 (Suburban Agricultural) to SAG-5 (Suburban Agricultural). The property is located at 395 Swan River Road and contains 59.09 acres.

STAFF REPORT

Andrew Hagemeyer reviewed Staff Report FZC 08-01 for the Board.

**BOARD
QUESTIONS**

Cross asked if the project went before BLUAC.

Hagemeyer said BLUAC voted unanimously to deny the project because they felt it would not fit the character of the neighborhood and the density would be too high. Twelve people spoke against the project at the BLUAC meeting.

Pitman asked what the difference of density would be between SAG 5 and SAG 10.

Hagemeyer said the maximum lots would be 5 clustered lots or 7 lots with a PUD for the whole property if it stayed SAG-10. If it

turns into SAG-5, there could be 12 lots with cluster and 24 lots with a PUD.

Cross said when the density increases by 100 percent it is a significant change.

**APPLICANT
PRESENTATION**

Erica Wirtala, Sands Surveying, asked for there to be a change to the application from Highway 82 to the Swan Highway and MDOT to the County Road Department. She said there are 12 criteria to look at for a zone change. The proposal has to address the 12 criteria. She said the applicant's son actually lives in the old farm house. The Planning Board heard from many of the neighbors that came to the BLUAC meeting and neighborhood meeting but it is important to realize the proposal complies with the Master Plan and the future Bigfork Neighborhood Plan. It is an expansion of an existing zoning district. The application asks for the worst case scenario and if a straight subdivision would go through there could be 11 lots. The penalties to get an increased density when utilizing cluster to SAG-5 would require a dedication of 60 percent of the land as open space. She said that would leave 30 acres of open space with 18 single-family lots possible. A PUD requires a lot from the developer up front with very strict standards with how the property will be developed. A PUD is not an option that a lot of people can do but a PUD could get a maximum of 24 lots. It is not the intention of the owners to do either one of the cluster or PUD. The property has been in the family for a long time. The applicant wants to give their children 5 acres and retain 15 acres for themselves.

Stan Mildren, applicant, said a 10-acre lot is not manageable for the average land owner. He wanted to give 5 acres to 6 of his children and keep the rest for himself. He plans on selling 15 acres, but has no intention of doing cluster zoning. He would seek CC&R's to not allow clustering. The layout will be determined after the results of the perk test. The family has lived in the area for about 100 years. The applicant cares about the area and has a personal interest in seeing the integrity and value of the community preserved.

Dan Mildren, 395 Swan River Rd. has two kids and moved to Montana to retain the property in the family. He has the desire to maintain as much of the property as possible and he understands the concerns of the neighborhood. He doesn't want cluster housing and would like to continue with what is south of the area which is all SAG-5. He hoped the Board would approve

the zone change. Both of the grandparents passed away in the home he lives in now and he wants to die there too.

**PUBLIC
COMMENT**

Tim Calaway, 365 Riverbend Rd, has a 40-acre parcel that is SAG-5 and 40 acres that is AG-40. He used to serve on the Planning Board and there is no real good reason to not change the property to SAG-5. He said the applicant can do the same thing with SAG-10 zoning. If they cluster the property they could get 7 parcels and that is exactly what they want. The applicant doesn't need to change from SAG-10 to SAG-5. They are talking about keeping a 20-acre and 5-acre parcel and if they cluster they can do that. Clustering sounds like a bad word, but wheat patches aren't any better. He respects the Mildren's and what they are trying to do.

Gary Rigerhoff, 250 Swan River Rd. he wanted the Planning Board to review the application again. He wanted to point out that at the north border there is a non-conforming residential area that takes up 8% of the entire border. The rest of the north Border is AG 40. The south border is 30% SAG-5 and has been that way for at least 20 years. The east border is 20% AG-40 and the west is 20% SAG-10. There is only 38% of the entire property line that is zoned SAG-5 or less. The remaining 62% is SAG-10 or higher. The only commercial activity in the area is the new barn consignment antique shop. The land use designation in the 93 Master Plan was SAG-10 and still is in the new Bigfork Neighborhood Plan that is going to get looked at tonight. When you cut something in half it doubles the density. The market in the area is a county store, the church is a meeting hall, and the indication that the area is a metropolitan area is ridiculous. It is a rural country setting. He was concerned about the character of the neighborhood. SAG-10 matches the character of the district. If you were to stand in the middle of the Mildren property and look north, you would only see the huge residence and the sod farm. He said the applicant hasn't met the 12 criteria.

Lynn Taylor, 405 Swan River Road, showed photos to the Board. She handed out a letter to the Board and said 10-acre lots are not hard to manage. She went through the 12 criteria and read her letter to the Board.

Becky Hughes, 285 Swan River Rd., showed pictures to the Board and handed out a letter to the Board. She showed photos of the congested intersection and said there will probably never be a stop sign there. The entire community put out a petition to

get a light put in and the highway patrol said it is one of the most dangerous intersections in the Flathead Valley. The Mildren's might not want to do a cluster subdivision but future owners might. There is no shoulder on the road. The bike path doesn't go on the Mildren property. Her biggest issue is safety and she felt there was some deceit in the application. BLUAC listened to the neighbors and voted against rezoning the property. She said it's a very unique area and it's always been the wishes of the neighbors to keep it zoned the way it was in 1993. She was worried about adding light because you can see the stars now, but with added houses you might not be able to see stars. She said the property shouldn't be rezoned. The Mildren's gave the neighbors their word they wouldn't rezone.

Pitman said she owns a 3-½ acre lot in AG-40.

Hughes said that is correct.

Pitman asked if there were 4 lots at 3-½ acres.

Hughes said that is correct.

Don Hanks, 350 Swan River Rd. said there are good points to both sides. He asked the Board to keep the property zoned SAG-10.

Claudia Bielenberg, 295 River Bend Dr., owns 80 acres bordering the Mildren's property and agreed with what everybody said. Tim Calaway was correct about being able to do what they want to do with the SAG-10 property. If it is changed to SAG-5 now it might be bad in the future.

Lloyd Thorsrud, 295 River Bend Rd. said the homes built on the property would be in his sight when looking from his property. He said what the Mildren's want to do can be accomplished by keeping the SAG-10 zoning. There is a problem with weeds in the area. He said 10-acre lots are more manageable with weed control than 5-acre lots. He agreed with all of the neighbors.

Mark Mahugh, 223 Swan River Rd., wants to see the property stay SAG-10. He doesn't want to set precedence for people to change their property to SAG-5. He said a developer could come in and create a 24-house cluster development. He knows the Mildren's have honest intentions, but future owners may not. During school hours there are crossing guards, but not after

school areas. He is concerned about noise, light, and pollution.

Ed Sirtex, had farmed next to the Mildren's since 1960. The first 120 feet of the area is a quick sand drop. He discussed the septic systems being close to the river. He doesn't think the property is fit for 5 acre lots.

Sue Hanson, secretary for BLUAC, said in the past minutes was emailed to the Planning Staff but several months ago BLUAC started sending minutes to the Planning Board separately. The advisory committee spends a lot of time working on the projects. The 5th page of the minutes has the comments of the committee members. She read the BLUAC minutes.

Charles Lapp, 320 Columbia Falls Stage Rd, said in a SAG-10 you have to leave 70% open space. He said that would only leave 18 acres left to do 6 lots. The requirements for a PUD probably wouldn't pass in the area.

Kurt Taylor, 405 Swan River Rd. said if it's zoned it doesn't need changed. Is the decision tonight going to change again in 3 years? When do zone changes stop? He was worried about setting precedence for the area. He was concerned with septic, water, noise, and lights. The density problem may not be there today but it could be there in the future.

**STAFF
REBUTTAL**

None.

**APPLICANT
REBUTTAL**

Wirtala said when she is filing out the zone change application she looks at a vicinity map and start putting together an idea of what is in the area. She looked at the Bigfork Neighborhood Plan and showed the Board what was in the surrounding areas. There were a lot of the concerns from neighbors with valid points, but their concerns are addressed with a subdivision, not zone change. When looking at a vicinity map, it looks like the zone change is in character with the neighborhood and in compliance with the master plan. She said Charles Lapp brought up an important point that if the property was kept SAG-10 then 70% of the property would have to be open space.

Dziza asked about the commercial strip running down the Swan River Road.

Wirtala said it is within a ½ of mile.

Stan Mildren said one thing that has been ignored totally is the three lots he needs to sell to pursue dividing the land. In regards to the zone change, his mother was concerned about getting a 10-acre zone change.

**MOTION TO
ADOPT
CRITERIA**

Hickey-AuClaire made a motion seconded by Pitman to adopt Staff Report FZC 08-01 as findings of fact.

**BOARD
DISCUSSION**

Cross said the soil and ground water issue would relate to number 10 of the criteria. He said the rest of the general comments would be under number 3 of the criteria.

Mower said the criteria are so subjective you could argue both sides of the fence. He said the whole process is useless.

Cross said the criteria come straight out of state statute.

Pitman said the criteria are only being argued for SAG 10, not clustering and PUD's.

**MOTION TO
AMEND
CRITERIA 10**

Cross made a motion seconded by DeKort to amend criteria 10 to state: The requested zone is consistent with the Bigfork Land Use Area Plan and the Flathead County Growth Policy. The area is suitable for suburban agricultural uses. *Public testimony indicated that problems with high groundwater and soil types make this property unsuitable for higher densities.*

**BOARD
DISCUSSION**

Mower said the area is suitable for suburban agricultural use. He said it is a zone change, not a subdivision.

Cross said by approving the zone change it is blessing an increase in density.

Harris said there are 3 distinctions in the permitted uses of SAG 5 and SAG 10. In SAG 10 you are allowed all of the uses in SAG 5 and a few other permitted uses.

**ROLL CALL TO
AMEND
CRITERIA 10**

On a roll call vote the motion passed 6-3 with Toavs, Dziza and Mower dissenting.

**MOTION TO
AMEND
CRITERIA 3**

DeKort made a motion seconded by Cross to amend criteria 3 to state: Currently, the area is zoned SAG-10. The proposed zoning of SAG-5 is not a substantial change. Both zoning districts permit agriculture, single-family residential and limited home based businesses. The uses are very similar; the most significant differences in the zoning districts are the minimum lot size. *The proposed zoning of SAG-5 would double the permitted densities on the proposed site.*

**ROLL CALL TO
AMEND
CRITERIA 3**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

The Board discussed how to address the density issue throughout the criteria.

**ROLL CALL TO
ADOPT
CRITERIA**

On a roll call vote the motion passed 8-1 with Mower dissenting.

**MOTION TO
RECOMMEND
APPROVAL**

Heim made a motion seconded by Hickey Au Claire to recommend approval of FZC 08-01 to the Commissioners.

**BOARD
DISCUSSION**

Heim said the zone changed looked like a fairly simple thing with SAG 5 to South and business zoning to the north.

Dziza said everyone is assuming that someone is going to do a cluster or PUD. PUD's are supposed to be a good thing but every time someone discusses zoning someone brings up PUD's as negative things.

Heim said a zone change doesn't approve a subdivision.

Mower said once there is a zone change a subdivision still has to go through the normal process. He said the Planning Board should take heed to BLUAC because the members live in Bigfork and know the neighborhood. To make a zone change there needs to be a compelling reason and there is no compelling reason other than the owners wanting to subdivide. He said the mistakes of the past should not be used as a basis for making decisions in the future.

Heim said zoning should be difficult to change.

DeKort agrees with Mower. BLUAC should be listened too.

Pitman said the Planning Board should weigh heavily on the side of BLUAC.

Cross said it is important to take BLUAC's position into mind.

ROLL CALL TO APPROVE

On a roll call vote the motion passed 5-4 Cross, Mower, Pitman and DeKort dissenting.

BIGFORK NEIGHBORHOOD PLAN FPMA 08-01

A public hearing to adopt the revisions to the Bigfork Neighborhood Plan and to include the Bigfork Neighborhood Plan as part of the Flathead County Growth Policy. The Neighborhood Plan revisions need to be in general compliance with the Flathead County Growth Policy and Montana state law.

STAFF REPORT

BJ Grieve reviewed Staff Report FPMA 08-01 for the Board

BOARD QUESTIONS

None.

APPLICANT PRESENTATION

Craig Wagner, Chairman of the Bigfork Steering Committee (BSC) said thousands of hours have gone into putting the document together.

Shelly Gonzales, 4747 Foothill Rd. said they wanted to make sure the community was totally involved in the design and the work on the plan. They started by doing a public survey and had an industry analyst review the survey. They sent a survey to every property owner or registered voter in the Bigfork district. They held 170 public meetings for the plan and over 300 people attended one meeting. The community really galvanized to make sure it was a fair document that represented all of the community.

John Bourquin, 145 Middle Pierre Lane, said there was a sub-committee to the BSC called the Government Committee. He asked the Board to look at page 51, the 3rd paragraph down references that if you would incorporate Bigfork there would be 69% property tax increase, but it should read 27%.

PUBLIC COMMENT

Charles Lapp, 3230 Columbia Falls Stage, handed out a letter to the Board of the same thing he gave them last week regarding the text amendment. He said even though we have operated differently in the past, the wording is still there and it is still

legal. The supreme court says the neighborhood plans become regulatory. He discussed the following:

- pg 15 policy 8.3 sites up to 5 acres using public sewer and water is not feasible
- pg 21 policy 9.6 the wording conflicts with current zoning
- pg 22 policy 10.1 through pg 22 - how is a sub committee of the Bigfork Land Use Plan going to actually accomplish the goal
- Pg 24 bottom ½ of pg. – the zoning has to be one or the other, not AG and SAG
- Pg 25 4th bullet down – gravel extraction needs to be better defined
- Pg 41 goal 11, commercial and industrial development, park land being dedicated in commercial projects, but commercial projects are exempt from parkland
- pg 41 goal 12.2 impact fee laws - the assessment shall include costs associated with impacts adjacent to development – not fair to pay costs of the neighbors
- Pg 43 policy 13.2 construction should be revoked if not completed within two years of approval, but variances and CUPS cant be revoked if started within a year of getting it granted
- Pg 43 policy 14.3
- Pg 45, 17.9 cant take away variances, CUPs or zoning
- Policy 18.1 parkland - if the municipality gets the park its up to the publics responsibility to take care of it
- Pg 83 – implementation strategy
- Pg 84 – doesn't comply with the Growth Policy
-

Erica Wirtala, said pg 84 states that you cant amend the text or maps in the plan, but people should be able to submit an amendment to the plan. The Planning Board and Commissioners should look at any changes made, not just BLUAC and the BSC. She would like to see density attached to the zoning designations.

Grieve said there is a density map on pg 24.

Craig Wagoner said in making amendments it requires a 2/3 vote as outlined in Roberts rules of order.

Ralph Walton, 52 Harbor Drive, thanked BLUAC and Staff for their hard work. He appreciated the careful consideration of public comment and felt the plan gives comprehensive treatment or the rural community. He supported the plan.

Sue Hanson, 220 Swan River Rd., said an attorney drafted a definition of should and shall. There are some areas that should be paved, maybe by and RSID, but they somehow need paved.

Leslie Worotwitz, 11985 Halverson Drive, worked on the plan, but actually lives in Lake County. She was proud of the plan and knows from all the years of working with Bigfork they will do their best to attend to the details. She thanked the Board for their consideration.

Paul Rana, Woods Bay Point, Lake County, thanked the Board and Staff for their hard work. As people come into the area and see a postcard the Valley they have an impression that somebody is doing something to keep it that way. The plan is part of a good community.

**STAFF
REBUTTAL**

Grieve said the plan has been available for a long time and if the concerns of the public would have been brought up earlier they could have been addressed. He gave the Board examples of some issues. He said the comments brought up by Lapp were excellent comments.

**APPLICANT
REBUTTAL**

Shelley Gonzales said she agrees with Grieve and some very valid comments were made. She said many of the goals and policies were created to give the community a vision of how development would be looked at. She said no body is trying to regulate anyone's ability to develop but the plan would show someone who moved into to Bigfork what they could expect to see as far as how the community would grow on the residential side and community side.

Pat Wagoner said the committee is trying to look at something to give to realtors so they will know what to expect in Bigfork. She discussed the lighting standards.

**BOARD
DISCUSSION**

Cross said the Board has struggled with neighborhood plans and revisions of neighborhood plans. It often looks from a neighborhood perspective that the Board is making arbitrary changes. He discussed the workshop for the North Fork Plan and said it was extremely helpful.

DeKort said the workshop process worked very well and he would like to stick with that process.

Dziza said as far as neighborhood plans go it is the best one he has ever seen, but it might need cleaned up a bit.

Hickey Au-Claire wanted to go through the workshop.

Grieve recommend meeting on June 25th for the workshop.

MOTION TO CONTINUE

Pitman made a motion seconded by Hickey Au Claire to hold a workshop for the Bigfork Neighborhood Plan on June 25, 2008.

The motion was carried by quorum.

OLD BUSINESS

Harris said the brown bag lunch for the Commissioners will be held on April 14, 2008.

Harris said May 7th is the retreat.

Harris handed out a copy of the analysis of text amendment.

OLD BUSINESS

Harris gave the Board a copy of the press release regarding the subdivision regulations.

DeKort asked about Cross and Mower not being able to participate in the North Shore Ranch meeting.

The Board discussed the participation of the North Shore Ranch meeting.

ADJOURNMENT

The meeting was adjourned at approximately 10:40 p.m. on a motion by Pitman seconded by Toavs. The next meeting will be held at 6:00 p.m. on April 16, 2008.

Gordon Cross, President

Kayla Kile, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED:6/4/08