

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF MEETING
JUNE 6, 2006**

CALL TO ORDER

The regular meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Committee members present were Tony Sagami, Gina Klempel, Scott Hollinger, and Denny Rea. Mark Hash had an excused absence. Traci Tull, Jeff Harris, Kirsten Holland, and Rebecca Shaw represented the Flathead County Planning & Zoning Office (FCPZ).

There were 12 people in the audience.

APPROVAL OF MINUTES

Hollinger made a motion seconded by Klempel to approve the May 2, 2006 meeting minutes.

The motion was carried by quorum.

**BEAR DANCE
VILLAGE/FCU 06-09**

A request by John and Marilyn Olson for a Conditional Use Permit to construct a multi-family dwelling within the Bigfork RA-1 (Residential Apartment) Zoning District. The property is located at 135 Bayside Drive.

STAFF REPORT

Traci Sears-Tull of the Flathead County Planning & Zoning Office reviewed Staff Report FCU 06-09 for the Board.

APPLICANT

John Pierson represented the applicant. He presented a display and site plan of the project.

Greg Lukasik, of Morrison-Mairle, elaborated on the site plan.

Klempel asked if he was referring to drawing C1 that was included in the packets.

PUBLIC COMMENT

Toni Lorendo said the project would be a positive addition to the Bigfork area.

Jerry Norskog talked about the architecture and supported the project.

STAFF REBUTTAL

None.

APPLICANT REBUTTAL

Pierson talked about the historical use of the property. He said it used to be a bed & breakfast but they will no longer allow short-term rentals.

BOARD DISCUSSION

Klempel asked how many fire hydrants would be installed.

Lukasik said as far as he knew only one (1) is being installed.

Rea asked how the Bigfork Board voted.

Lukasik said it had passed unanimously.

MOTION Sagami made a motion seconded by Hollinger to adopt Staff Report FCU 06-09 as findings of fact and grant the CUP.

BOARD DISCUSSION Klempel asked if there would be dust abatement during construction.

Lukasik said yes. He said it's a pretty moist area but dust abatement would be done if necessary.

ROLL CALL On a roll call vote the motion passed unanimously.

STODDARD/FZV 06-05 A request by Craig Stoddard for a Zoning Variance to property located in the Bigfork, SAG-10 (Suburban Agricultural) Zoning District. Specifically, the variance is to Section 3.07.040 3(a), Minimum Yard Requirements for Principal Structure, of the Flathead County Zoning Regulations. The applicant is requesting a reduction from the 20-foot rear setback to a 5-foot rear setback. The property is located at 1313 Holt Drive.

STAFF REPORT Kirsten Holland, (on the behalf of George Smith), of the Flathead County Planning & Zoning Office reviewed Staff Report FZV 06-05 for the Board.

Sagami asked Staff to hold up the map and indicate which direction is west.

APPLICANT Pete Bentley, owner of the property, said he discussed this in the planning & design phase with the two closest neighbors who are potentially affected by changes on this property. He talked about the slope of the property, where the variance is being requested, and the minimal effects it would have in regards to future building sites.

PUBLIC COMMENT None.

STAFF REBUTTAL None

APPLICANT REBUTTAL None.

BOARD DISCUSSION None.

MOTION Klempel made a motion seconded by Sagami to adopt Staff Report FZV 06-05 and grant the variance.

ROLL CALL On a roll call vote the motion passed unanimously.

**WILLIAM PRICE/
FCU 06-08** A request by William Price for a Conditional Use Permit to construct a multi-family dwelling within the Bigfork RA-1 (Residential Apartment) Zoning District. The property is located at 104 Sunrise Terrace, in the Crestview Eighty #2 Subdivision.

STAFF REPORT Rebecca Shaw of the Flathead County Planning & Zoning Office reviewed Staff Report FCU 06-08 for the Board.

APPLICANT William Price introduced himself as the owner and then introduced his builder, Gary Riedel. Riedel explained the project and displayed drawings for the Board.

PUBLIC COMMENT None.

STAFF REBUTTAL None.

APPLICANT REBUTTAL None.

BOARD DISCUSSION Sagami said he was happy to see a project like this in Bigfork. He commended the applicant.

MOTION Sagami made a motion seconded by Hollinger to adopt Staff Report FCU 06-08 and grant approval of the Conditional Use Permit.

BOARD DISCUSSION None.

ROLL CALL On a roll call vote the motion passed unanimously.

HANSON ZONING APPEAL/APPEAL 06-01 An appeal by Flathead Citizens for Quality Growth of the decision made by the Flathead County Zoning Administrator on March 16, 2006 regarding the validity of FCU-97-11. The subject property is located at 3248 Farm to Market Road, in Kalispell, MT.

Klempel stated she and her husband own a gravel pit but she had no interest in this project. She did not step down.

POINT OF ORDER Bill Spence, of the Daily Inter Lake, called a point of order and said this is the public hearing and the public should have the opportunity to speak, whether the Board wants to consider their testimony or not.

STAFF REPORT Kirsten Holland of the Flathead County Planning & Zoning Office briefed the Board on the proceedings of an appeal.

Jeff Harris of the Flathead County Planning & Zoning Office reviewed Staff Report Appeal 06-01 for the Board.

APPLICANT Roger Sullivan, Attorney, represented the applicants. He handed out packets to the Board for their review. He reviewed the original conditional use permit, FCU 97-11, and referenced the Flathead County Zoning Regulations. He pointed out some rules and regulations he stated weren't followed during the consideration of the original conditional use permit. He talked about MDEQ requirements including Annual Progress Reports (APR's) and said gravel operators are to certify these reports once per year. He talked about the affidavits submitted in regards to the Hanson pit and referred to them as "hearsay." He referenced pictures submitted to the Board, and said those photos collaborated with a statement that was made in regards to tree growth on the banks of the pits. He said the original decision should be reversed and a new conditional use permit would need to be applied for.

Clara LaChappelle, 3580 Farm-to-Market Rd, lives about ¼ mile away from this pit. She said she bought her house in 1990 and has seen no activity coming from this pit. She said the road that's there is a driveway not a road. She asked the Board to put a stop to this.

David Lessor, 1978 Church Drive, said he has not seen gravel leave the pit until Mr. Beasley bought it.

Elaine Lessor, 1980 Church Drive, said she moved back in 1995 and that her brother (now deceased) never purchased any gravel from Hanson's Pit. She said there had been no activity in the pit until Mr. Beasley hauled some out with dump trucks.

Phil LoPresti, 413 Lost Creek Drive, lives about 1 mile from this pit. He handed out a letter he wrote for the record. He talked about other gravel pits in the area, including the Tutvedt and Krueger pit. He said within 1 mile of these pit locations are 250 residential dwellings. He requested this permit be denied.

APPELLANT

Michael Kakuk, Attorney, represented Mr. Beasley. He said this issue should not be back at the Board tonight. He said Staff determined this was a valid permit and that there has been activity in the pit. He said there has been no appealable event and what the applicants are asking the Board to do is to second guess a decision made 10 years ago. He asked the Board not to accept the Appeal.

PUBLIC COMMENT

Mark Schwager, West Valley resident, said the issues presented tonight are relevant and asked the Board to approve the appeal.

Angie Clark, West Valley Resident, agreed with FCQG and was in favor of the Appeal. She said she's lived out there for 7 years and hasn't seen any activity. She was offended by an attorney's comment, stating that accepting this appeal would open a window. She said if pits aren't following the regulations they should be shut down and follow the letter of the law.

Wally Wilkenson, 1160 Coons Rd (approximately 3 miles from this pit), is Joe Beasley's realtor and said he knows a lot about this property. He said he understands people's concerns but said they stepped into this after-the-fact with the understanding there was an active permit; that's why Mr. Beasley bought the property.

Steve Vandehay said the Board needs to address the legal issues regarding the original conditional permit. He handed out a packet from the County GIS showing the pit had been reclaimed.

Rea stated, for the record, he works for the Flathead County GIS department. He said he obtained a list of gravel pits from the State in an attempt to map them out. He showed some photos of the pit.

Vandehay continued to talk about the conditional use permit and said the new owner should have to re-apply. He said the subject

property is currently “tied up” in a lawsuit and said the property could potentially be seized.

Meliss Clark, 1190 Clark Drive, thanked the Board for their public service. She said the issue is the legality of what’s been presented.

Greg Stevens, 31 Lower Valley Rd, represented the Montana Contractor’s Association. He said gravel pit hearings may be confusing possibly because the County and MDEQ aren’t on the same page. He suggested the FCPB, have a workshop with MDEQ and said it may be a good thing for this Board to do as well. He talked about MDEQ permitting and County zoning compliance forms and said it’s a situation of what comes first, the chicken or the egg. He said this pit does have an active DEQ permit.

Rea called a Point of Order and asked if Mr. Stevens had information pertinent to this appeal.

Stevens continued to talk about what constitutes an active pit from a DEQ standpoint. He talked about APR’s and the size of the pits in regard to reclamation bonds.

Irene Vandehay, 644 Bald Rock, said she talked to Clay Colby, of MDT, who said he couldn’t locate an approach permit for this property. She said the active permit doesn’t meet State or County standards. She submitted a copy of the approach permit from the County.

Staff said the Hansons got an approach permit from the Road Dept in 1994, which was accepted as the approach permit for this conditional use permit.

Vandehay continued to talk about her conversation with Colby. She said the width of the road wasn’t wide enough, the fall off is too steep, the encroachment is not paved back far enough, and the site distance for getting on to Farm To Market should be 985 ft. and it’s not.

Gary Krueger, 805 Church Drive, was a neighbor of the Hanson’s. He said he never saw a truck leave but that Mr. Hanson had a lot of gravel extraction equipment that remains on his sister’s property today. He said Mr. Hanson understood he had an active gravel pit and believes he made every good faith effort and that it is a legitimate gravel pit.

STAFF REBUTTAL

Harris pointed out some clarifications. He referenced several of Mr. Sullivan’s exhibits. He talked about the size of the pit and road conditions.

Rea said he sat on the Board when the original permit was issued. He said it was intended to be a “Ma & Pa” operation.

Harris continued to talk about the catch 22 between County and DEQ permitting. He continued to talk about the zoning code and two

sections that are contradictory.

Rea asked if this should be dealt with on a County level.

Harris said yes.

Holland clarified a comment that was made about Mr. Beasley trying to obtain a 24-acre pit.

Harris said Staff was unaware of the last exhibit (16) presented in Mr. Sullivan's packet. He talked about the communications between Staff and Mr. Beasley regarding his intentions for extraction.

Rea said the original conditional use permit limited the site to 15-acres. He talked about Condition #8 requiring the road to be paved to County specifications. He showed some pictures of the road to the Board for their consideration. He said at the time, the FRDO office did not do their job and nothing was enforced.

Sagami asked a question of Harris about timelines and said the road issue is a big concern for him. He wanted to hear what Mr. Kakuk had to say about it.

Harris talked about the encroachment permit that was issued.

Rea said the current road was intended to be the "haul road." In its current condition, you couldn't drive on it if it rained; it would be a mudhole. He said that FRDO should have done their job; it's not the Board's job to enforce.

Kakuk said Mr. Beasley doesn't have a problem bringing that road up to County standards. He said if the road was out of compliance someone should have let them know.

Rea reiterated he was on the Board for the original conditional use permit and that FRDO did not do their job.

Kakuk thanked the Board for 10 years of service and reiterated that Mr. Beasley would be willing to make required changes.

Rea said the FCPZ office should have an enforcement person who goes out and checks on all conditional use permits.

Hollinger brought up the definition of extractive industries and asked if all the people in the County selling topsoil have conditional use permits.

Harris said that people have the right to extract 10,000 cubic feet of material on their property without being required to obtain a permit.

Hollinger wanted to see if the County and DEQ had the same definitions of a pit.

Sagami asked Staff why this permit wasn't a big issue for them.

Harris said a 15-acre pit isn't comparable to larger pits in the area. He said they also had to consider what the standards were in 1997. He said the conditions for the permit were vague and Staff evaluated it based on the 1997 rules. He said if a permit gets submitted today, it's subject to more scrutiny now as opposed to back then.

Rea said when the Board sets forth criteria on these permits, they have no way to uphold it unless someone from the Planning office keeps up on it.

Hollinger asked what the process would be if someone were to come in and point out a violation of conditions of approval.

Harris said the opportunity to go out and investigate is limited because of prioritization. He said the office does what they can to address the violations and tries to get people to voluntarily clean-up and come into compliance, if not, the violation gets forwarded to the County Attorney for prosecution.

Harris pointed out the difference between a violation and non-compliance of conditions.

The Board discussed the process of compliance of conditions.

Harris talked about DEQ permitting and said they are backlogged about 10 months. If people don't have all the required documents in 12 months, it doesn't mean they aren't making a good faith effort.

Kakuk talked about the Appeal and the validity of the conditional use permit.

Mr. Sullivan talked about the Board ensuring their integrity and making sure people follow the mandatory conditions placed on permits. He talked about the road being paved to County specifications; and said there's no "wobble room" because these specifications are outlined in the regulations, which are public documents. He said this permit never was valid because conditions weren't met. He said Mr. Hanson took 8 ½ months to turn in his paperwork to DEQ, which is not a good faith effort.

APPLICANT REBUTTAL

None.

MOTION

Sagami made a motion seconded by Klempel to reject the appeal and revoke conditional use permit #FCU 97-11.

BOARD DISCUSSION

Hollinger talked about the reason he would not support the motion. The Board is considering the Zoning Administrator's decision.

Rea said this is a unique case.

Hollinger said it's not fair for someone else to pay the price for FRDO's dysfunction.

Rea said he does have a problem with having a gravel pit and not

paving the road. He said it's unfortunate the Board has to see this; it's not the Board's job to enforce.

Rea doesn't think the recommendations for the original condition us permit were met. He doesn't think there was ever a "good faith" effort.

Sagami thinks the old permit was wrong but Mr. Beasley needs due process.

The Board discussed what they were actually voting on.

Rea said it's "two fold." They are voting on the appeal and the validity of FCU 97-11.

Harris gave the Board some direction.

MOTION WITHDRAWN

Sagami withdrew the original motion, seconded by Klempel.

BOARD DISCUSSION

Harris read wording for the Board to consider.

MOTION

Sagami made a motion seconded by Klempel to reject the decision made by the Flathead County Zoning Administrator.

BOARD DISCUSSION

Hollinger thinks the Board would be setting a dangerous precedent.

Klempel asked Harris if he feels this would be setting precedent.

Harris said each permit is looked at individually on a case-by-case basis. He said it's not a "one size fits all" deal.

ROLL CALL

On a roll call vote the motion passed unanimously.

NEW BUSINESS

Jeff Harris discussed next month's agenda.

ADJOURNMENT

The meeting was adjourned at 9:00 p.m. on a motion by Rea seconded by Sagami. The next meeting will be held at 6:00 p.m. on July 5, 2006.

Dennis Rea, President

Wanda Ring, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 7/5/06