

**FLATHEAD COUNTY PLANNING BOARD  
MINUTES OF THE MEETING  
SEPTEMBER 9, 2009**

**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, Gordon Cross, Frank DeKort, Marc Pitman, Mike Mower, Jeff Larsen. Randy Toavs and Jim Heim had an excused absence. BJ Grieve and Jeff Harris represented the Flathead County Planning & Zoning Office.

There were three people in the audience.

**APPROVAL OF  
MINUTES**

DeKort made a motion seconded by Hickey-AuClaire to approve the August 12, 2009 meeting minutes.

The motion passed by quorum.

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

None.

**TEXT  
AMENDMENTS  
(FZTA 09-01)**

A request by the Flathead County Planning and Zoning Office for amendments to the text of the Flathead County Zoning Regulations (regulations); some of which are amendments based on changes in state law; some of which are amendments based on requests from the Flathead County Attorney's Office; and most of which are amendments based on a desire to improve the consistency and clarity of the regulations. The general character of the proposed amendments is:

- Sections 3.31.030(4)(A), 4.03.030, and 7.04.120 of the regulations will be amended to include a reference to the recently created "R-2.5" residential zoning district.
- Amending Section 2.08.020(4) to clarify the point at which an application for a zoning text or map amendment is "vested" in the regulations by which it will be reviewed. This amendment will also impact section 2.08.030(1) by reference.
- Adding "Fire Stations" and "Police Stations" as permitted uses in the "P" public zoning district (Section 3.30.020). A definition of fire stations will be added to Section 7.07 and a definition of police stations will be added to Section 7.16 of the

regulations.

- Update Section 3.03.030 of the regulations to include a reference to Sections 3.34-3.43, zoning districts that have been added since Section 3.03.030 was originally adopted.
- Amend Section 3.03.020(3) of the regulations to eliminate use of the term “primary use” and change it to “principal use.” This amendment will improve the clarity and consistency of the regulations when cross-referencing Sections 5.01 and 7.16.080, both of which use the term “principal use.”
- Amend Sections 2.05.030(5) and 2.06.060 of the regulations to grant the Board of Adjustment revocation authority if the terms and/or conditions of an approved variance or conditional use permit are not met.
- Amend Section 7.18.045 of the regulations to improve the clarity of the definition of “setback,” specifically to define “front,” “side,” “side corner,” and “rear” setbacks.
- Add a definition of “Tavern” (currently a Conditional Use in B-2, B-3, I-1 and I-1H zones) to Section 7.19 of the regulations. It has long been the interpretation of zoning administrators that casinos are permitted where taverns are permitted, since alcohol is usually served; this definition will codify that interpretation for future reference.
- Update three sections of the regulations for compliance with House Bill 486, effective May 05, 2009. Generally, the character of these amendments will be:
  - Amend Section 2.08.020(7) of the regulations to comply with 76-2-205, M.C.A. Generally, this will involve adding a requirement that notice is posted in five public places at least 45 days prior to the Commissioner’s public hearing.
  - Amend Section 2.08.040 of the regulations to comply with 76-2-203, M.C.A. Generally, this will involve amending the criteria for evaluating zoning amendment requests.
  - Amend Section 2.09 of the regulations to comply with 76-2-210, M.C.A. Generally, this will involve adding a requirement that the County attempt to obtain voluntary

compliance with the regulations 30 days prior to filing a complaint for a violation.

**STAFF REPORT** BJ Grieve reviewed Staff Report FZTA 09-01 for the Board.

**BOARD QUESTIONS** Cross said he realized staff didn't want to go through the 12 criteria for every text amendment and requested a brief summary of each one.

Mower requested staff point out any specific changes that had been made. He wanted to know if any wording had been replaced from somewhere else in the regulations and could staff point those out to the board.

**STAFF REPORT (Continued)** Grieve started with Text Amendment #1 stating it was to clarify the vesting date for applications for zoning map amendments and zoning text amendments. Currently the subdivision regulations state applications are vested in the regulations in effect on the date they receive a notice of sufficiency. There is no equivalent for zoning. The county attorneys requested the vesting date be the date a complete application is submitted to the planning & zoning office. Staff may have to start sending completeness letters for zoning related applications.

**BOARD QUESTIONS** Larsen asked why staff would make the vested date when a complete application is received and not the date it is submitted.

Grieve responded saying an applicant could very well submit an application staff would not be able to review without all the pertinent information and be vested in the regulations in effect at that time. An application could be 'on hold' in the planning office without enough information for staff to review it and still be vested under current regulations. This was a recommendation from the county attorney's office that it be when the application is complete. If it was an incomplete application and staff was not able to process it, it seemed strange to vest it in current regulations. An applicant could almost use it as a place holder without having all the information just to be reviewed under current regulations.

Larsen asked if there were a definition for what a complete application would be. He gave an example of filling out a DEQ application saying if you didn't put the owners phone number on there they could reject the application and send a denial letter. You would then have another 60 day review period. This process

could be abused and he thought there should be some kind of a definition for a complete application and not some little technicality.

Grieve stated the process could be abused either way.

Cross said they could discuss the issue further when they have board discussion and after they heard from the public.

**STAFF REPORT**  
*(Continued)*

Grieve continued stating Text Amendment #2 was updating a cross reference. The intent was referencing **all** of the zoning districts. (No questions were asked)

Text Amendment #3 addressed the revocation of Conditional Use Permits (CUP's) and the lack of the Board of Adjustments specific authority to revoke CUP's. The county attorney's office was interested in clarifying the fact that if a CUP was being granted and an applicant does not meet the conditions it would seem logical that the body that granted the permit could then revoke said permit if those conditions were not met. That would be applicable to CUP's as well as variances. If there was no way whatsoever to revoke a permit if the conditions were not met, that would not be in everyone's best interest. Therefore, this amendment would clarify that. (No questions)

Text Amendment #4 would be a cross reference for the recently adopted R-2.5 zoning designation. There were a few that were missed.

**BOARD**  
**QUESTIONS**

Cross asked which zoning designations this amendment would involve. The way he read it he thought it would not include R-1.

Grieve stated R-2.5 through R-5 would be a spectrum of two and a half acres down to 10,000 square foot lots. Originally the text read R-1 through R-5 because those were the residential zones. The R-2.5 is also a residential zone and the intent was to include R-2.5. Numerically it might not read well but it is based on zoning districts as they are listed in the regulations.

**STAFF REPORT**  
*(Continued)*

Text Amendment #5 would be adding fire stations and police stations as permitted uses in public zoning districts as well as accompanying definitions in the definition section.

Text Amendment #6 would be changing a reference of primary to make it principle. There are references in the zoning regulations

to primary uses and principle uses and staff is trying to streamline it so references are to principle and accessory uses rather than primary. Even though primary and principle uses are the same, staff wanted to clarify that to alleviate confusion.

Text Amendment #7 would add a definition for a 'side corner setback'. He explained this particular setback only applies to lots on a corner due to the fact you actually have frontage on two sides of the lot.

Text Amendment #8 basically states you can't do a casino unless a tavern is permitted. His understanding was state law requires casinos to have tavern licenses whether they serve alcohol or not. This amendment was to codify that interpretation to make it clear a person can only do a casino where a tavern is permitted.

**BOARD  
QUESTIONS**

Cross asked if that meant all casinos associated with Town Pumps would have a tavern license.

Grieve said his understanding was they had to have a liquor license to have a casino.

Mower said the machines go with the liquor license.

The board and staff discussed this issue further.

**STAFF REPORT  
(Continued)**

The following three amendments are a result of House Bill 486 which was passed during the 2009 legislative session.

Text Amendment #9 was regarding public notice. A new requirement was passed that there be public hearing notices posted in five public places within the zoning district before any amendment is heard.

Text Amendment #10 was regarding zoning amendment criteria. This was a fairly substantial reworking of the classic 12 criteria for a zoning amendment. Many of them remain, or the concept remains, and is reworded, reorganized and regrouped. The way the proposal is organized and worded comes directly from HB 486.

**BOARD  
QUESTIONS**

Cross asked staff their opinion regarding wording that states 'whether the zoning regulations are made in accordance with the growth policy'. In Flathead County's situation the zoning regulations pre-date the growth policy. He asked if that meant

anyone would debate that issue.

Grieve responded stating zoning regulations are both district maps as well as the text. In terms of whether or not this would set up a situation where staff would have to re-examine everything he couldn't say.

Larsen asked what the requirement was in regards to zoning text amendments and the 12 statutory criteria. He asked if HB 486 stated people should use the 'old' statutory criteria until such a time the zoning regulations were amended.

Grieve said he looked into that issue because staff was amending criteria for amending and how should staff proceed. He checked with the county attorney's office and they advised staff that the most defensible position they had was, for amending the county regulations today, staff should use the amendment criteria that are **in** our regulations. If we are amending those amendment criteria, once they are amended, we start using those.

Larsen asked if HB 486 had gone into effect immediately.

Grieve said it had an immediate effective date.

Larsen stated the board was doing some things in the regulations that really weren't consistent with state law then.

Grieve said the flip side of that would be that staff defer to what was changed in HB 486, but then it would not be consistent with the local regulations. Our local regulations still exist and have still been adopted. The consultation he received from the county attorney was that staff should review amendments by the ones we currently have adopted because staff is going through the process of revising them. He didn't get the impression it was ignoring state law as much as it was choosing between the lesser of two evils and having something that was defensible. When he spoke with the county attorney's office there was a reason for their response. There was case law established stating when statutes are changed, or we are updating local regulations to come into conformance with statute, we don't just start ignoring everything in the local regulations. Ideally staff would go through the process to update the regulations to bring them into conformance with statute. There was case law to establish that order of operations.

**STAFF REPORT**  
*(Continued)*

Text Amendment #11 would require the county to attempt to obtain voluntary compliance at least 30 days before filing a complaint for a zoning violation. A complaint for a violation refers to a citation for a violation of the zoning ordinance. Staff works with landowners for quite a while to obtain voluntary compliance.

**BOARD  
QUESTIONS**

Cross asked how this could apply to Text Amendment #3, the amendment that stated a variance could be revoked; there was no cure provision in that one. If evidence was presented the conditions were not being followed the permit would be revoked. This amendment states you had to have a 30 day cure provision prior to revocation of a permit.

Grieve stated that in practice, by the time staff got to a point when they had to revoke a permit, they would have long since expired 30 days in attempting to gain voluntary compliance.

Harris clarified, stating that one of the provisions in a Zoning Administrator's duties was to investigate potential violations of the zoning regulations and report those to the county commission or the Board of Adjustment. There was no provision as to what the board does with that. They have no clear authority in the regulations to do anything about those violations. Staff would have to receive a complaint, investigate that complaint, work with the violator to see if we could get some voluntary remediation and if that failed, staff would put together a report to take back to the Board of Adjustment for their consideration.

Mower asked if there were a way to start the clock on that 30 day period.

Grieve read the statute and clarified staff doesn't have the authority to issue citations.

Mower thought it could be problematic unless it was clear and established when the 30 days start.

Harris read the Zoning Administrators' duties and said in his mind, if staff received a written complaint, they would investigate and prepare a report for the county commission or Board of Adjustment, and the clock would start after staff has exhausted all efforts to gain voluntary compliance. It would then get sent over to the county attorneys' office.

Mower commented there needed to be something that triggers the 30 day period or people would argue they didn't get their 30 days.

Larsen commented that it can't be just something staff had in mind; people would have to know what the criteria would be.

**AGENCY  
COMMENTS**

None.

**PUBLIC  
COMMENT**

Gary Krueger, 805 Church Drive, commented on Text Amendment #3. He said he wanted to see the request from the county attorney's office regarding this change. He stated staff had mentioned the Beasley gravel pit and said his recollection was different. He gave some history of the property and his interpretation regarding the gravel pit and whether or not it was a valid operation. He felt Mr. Beasley wasn't given due process for his CUP and felt the procedure was incorrect. He believed Text Amendment #3 was covered in Montana Code Annotated (M.C.A.) 76-2-210 and that's the enforcement. If the county commissioners deem it necessary, they could follow up on a legitimate violation of a CUP. In the zoning regulations it does state the Zoning Administrator would receive and investigate allegations of non-compliance or violation of the zoning regulations and report the findings to the Board of County Commissioners. Mr. Beasley lost something of value and in his opinion if Mr. Beasley hadn't been an out-of-towner he would have lost some value to his land for no real reason. He asked the board to recommend Text Amendment #3 not move forward. They need to come up with the right process.

Tammi Fisher, 502 2<sup>nd</sup> Avenue East, stated she was uniquely familiar with the Beasley case as she had taken it to the Supreme Court. The underlying issue was whether or not the BOA had revocation authority. She thought when looking at revoking a CUP you are looking at revoking a permit that someone has a vested interest and a vested right in. If you give a violator 30 days notice it does not necessarily remedy what might have happened in the past. She didn't have a problem with a standard for revoking a CUP; she just didn't think this regulation change goes all the way it needed to go. A CUP is so important and has such great effect as people make their living off of having that permit. She spoke about the enforcement code from the current regulations and stated the Zoning Administrator or an applicant could bring a violation complaint forward to the county

commissioners. The county commissioners can consider that and then state to its county attorney to file the appropriate petition in District Court to revoke a CUP. In her opinion that would be the only and the best procedure for someone who could very well risk losing their livelihood. Only if they were out of compliance and could not come into compliance, certainly that would be subject to revocation. The current procedure allows for the Zoning Administrator to investigate those complaints and this amendment doesn't change that. This amendment allows the BOA to have revocation authority but then there would be inconsistencies in the zoning regulations. When there are those discrepancies, they ultimately lead to litigation. It needs to be clear. It would make sense to have a section in the zoning regulations outlining the process for revocation of a CUP. To put revocation authority at the end of the section for CUP's she felt was an error and would create more problems. She was glad they were moving forward with some sort of process but said this amendment doesn't get us there. A CUP is something people rest their livelihood on and if it's subject to revocation; we have to make sure there is a due process and proper procedure followed.

**STAFF  
REBUTTAL**

Grieve thought it was good input.

Harris had one clarification. There are a series of requirements in section 2.01 that talks specifically to the BOA's revocation authority. He read numbers eight, nine and ten of the Zoning Administrators' responsibilities that referenced revocation of CUP's. Part of the issue they had here was there were no actions in the regulations the board of appeals could do. This amendment attempts to do just that. The appeals section (2.04) lays out an entire procedure how to process an appeal to the BOA, including holding a public hearing. In this case it's unclear whether they have authority to deal with a CUP. That was the basis of the lawsuit. He just wanted to provide some clarification for that.

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

Pitman made a motion seconded by Hickey-AuClaire to adopt staff report FZTA 09-01 as findings-of-fact.

**BOARD  
DISCUSSION**

The board discussed each amendment and the findings-of-fact associated with each one. There was no discussion regarding Text Amendment #1 (FOF #1 and #2) or Text Amendment #2 (FOF #3 and #4).

Text Amendment #3, the amendment regarding the BOA's revocation of CUP's: (FOF #5 and #6)

Larsen stated he couldn't support this one as he had some issues with some of the steps of the 12 criteria. He was concerned with due process regarding the revoking of a permit by an appointed board. The way it was written he had concerns whether it would meet those 12 steps because of the due process part. It would be decided by an appointed board, there weren't rules of evidence, it could be just a mob of people that get their emotions going and it could be revoked. He said he would not be able to vote for those findings.

Cross said he may be right and they may not send all of the Text Amendments forward.

Larsen said if you started looking at due process and evidence, the courts have certain criteria for that. He wanted to make sure those rules were followed because of the investment people put into CUP's. They put millions of dollars into them; it's a whole different ball game than just an application where nothing has been granted. He was probably going to vote against the findings because of that.

Cross said the board could modify the findings. He asked Larsen to work on changing the language in finding-of-fact #6 so he might be more comfortable voting for the findings.

Text Amendment #4 which references the R-2.5 zoning district: (FOF #7 and #8) No discussion.

Text Amendment #5 would include police stations and fire stations in public zones: (FOF #9 and #10) No discussion.

Text Amendment #6 changes the word primary to the word principle: (FOF #11 and #12)

Cross asked staff if this was the only place where primary uses and principle uses appear repeatedly.

Grieve said yes and the amendment was for consistency.

Text Amendment #7 deals with adding a definition for side-corners and other setbacks: (FOF #13 and #14) No discussion.

Text Amendment #8 adds a definition for taverns, which includes casinos as taverns: (FOF #15 and #16)

Hickey-AuClaire asked staff if those definitions were being combined.

Grieve said currently taverns are a conditional use in some zones. There was not a definition of either one and this amendment would create a definition for taverns. At the end of the definition it states, 'for the purpose of zoning, casinos are taverns'.

Cross commented that currently casinos do not appear anywhere as a permitted or a conditional use under any zone.

Grieve responded that is correct. The Zoning Administrator can place uses not specifically listed and there has been a long standing interpretation that casinos are taverns because you have to have a liquor license. There was a logical connection there. Also, the impacts for a casino in terms of hours of operation and things like that would be functionally similar to a tavern.

Cross said staff was making policy official by adding the definition.

Hickey-Au Claire asked why there was not a definition for casino.

Pitman said it's already defined by statute.

Text Amendment #9 was regarding notice of hearings: (FOF #17 and #18) No discussion.

Text Amendment #10 sets up the new evaluation criteria: (FOF #19 and #20) No discussion.

Text Amendment #11 has to do with voluntary compliance in 30 days: (FOF #21 and #22) No discussion.

**SECONDARY  
MOTION TO  
(Amend F.O.F. #6)**

Larsen made a motion seconded by Pitman to amend Finding-of-Fact #6 to read: Amending Section 2.06.060 of the Flathead County Zoning Regulations to allow the Board of Adjustment the authority to revoke permits and variances was found to *possibly have an effect on statutory criteria #10, #11 and #12* ~~comply with or have no impact on all 12 of the zoning amendment criteria.~~

**BOARD  
DISCUSSION**

None.

**ROLL CALL  
(Amend F.O.F. #6)**

On a roll call vote the motion passed unanimously.

**BOARD  
DISCUSSION**

Mower asked if it would be an appropriate finding to say there was no current process for revoking a Conditional Use Permit. The issue was that if somebody was in violation what do you do.

Cross said that makes sense. As of right now CUP's may not be able to be revoked. If the board put in language saying they could be revoked, there was no process in place by which that could happen.

Mower said there should be a legitimate way to revoke CUP's that aren't being used appropriately or aren't being used under the conditions by which they were granted.

Cross said the board should also put into the finding that public comment brought that out.

DeKort said if it needed to be revoked someone would have to take it to District Court.

Mower said there was a need to clarify this because there was an issue.

**SECONDARY  
MOTION TO  
(Add F.O.F. #7)**

Cross made a motion seconded by Mower to add Finding-of-Fact #7 to read: *Public comment emphasized that there is no approved process whereby the Board of Adjustment (BOA) could revoke a CUP.*

**BOARD  
DISCUSSION**

Dekort said he guessed that assumed the BOA would be the appropriate channel for that.

Cross said currently the proposed amendment says the BOA is the ones who could revoke a permit. Public comment stated the BOA has no process in place and the amendment doesn't set one up.

Dekort commented that since the BOA has the authority to issue the CUP they should have the authority to revoke it and he didn't think that was necessarily true.

Mower stated there should be a process.

Hickey-AuClaire asked if the BOA could make a recommendation and send it to the commissioners for final action.

Cross said that board doesn't do that, the BOA makes the final decisions.

Larsen said there was not a real process in place. There could be a process where you went to the BOA with the violations and then that board would make a recommendation to the commissioners asking them take it up in District Court. There were all kinds of things the board could do. His concern was there were not definitions of what the evidence was and no definition of the criteria. People had invested so much money in some of these permits and it wasn't right that there were so many unanswered questions.

Harris referenced Section 2.03 where it lists the duties of the Board of Adjustment and 76-2-223 M.C.A. discussing the powers of the Board of Adjustment.

**ROLL CALL**  
**(Add F.O.F. #7)**

On a roll call vote the motion passed unanimously.

**BOARD**  
**DISCUSSION**

Dekort asked if Finding-of-Fact #5 was state law.

Grieve said he didn't know all the case law and reasons why these recommendations were forwarded from the county attorney's office. He stated he had worked with their office for the language.

Cross stated he didn't like the fact there wasn't an approved process for revocation of a permit but he had no problem with Finding-of-Fact #5. He didn't have a problem with the BOA revoking a permit as they were set up as a judicial board; he thought the process should be spelled out.

Pitman commented maybe in the finding if the board changed it from the board should have the power to revoke the permit; it could be the county should have the authority to revoke the permit.

Larsen agreed with that statement and added that the finding suggests because that board approved the permit they should

have the authority to revoke it as well.

Mower asked staff how the process was done in other counties.

Harris stated in other counties he has worked in they have done it this way. The BOA primarily deals with three (3) specific land use applications. CUP's, variances to the zoning regulations and they hear appeals. Their decisions are final and the appeal is not to the commission, it is to the court. He thought the issue was that in the regulations the BOA has the authority to grant these permits but there is nothing in the regulations that deals with situations where once granted and investigated, there is nothing to remedy non-compliance. He referenced the Beasley CUP saying the BOA reversed the Zoning Administrator's decision. It required a public hearing and based on the testimony the board felt there was enough evidence to overturn the Zoning Administrator's determination, which is their role.

Cross asked if an applicant could appeal any decision made by the Zoning Administrator or just decisions regarding CUP's.

Harris said any applicant has the right to appeal any interpretation of the zoning regulations made by the Zoning Administrator they don't like.

Cross reiterated any decision made by the Zoning Administrator that an applicant doesn't like could be appealed and it would go before the BOA.

Harris said it could be something as simple as a definition.

Grieve read from the zoning regulations, the section regarding appeals.

Cross stated under the zoning regulations an appeal would go to the BOA and beyond that it would go to District Court.

Harris said that is correct but there is nothing in the regulations that allows the BOA to act in those situations.

Mower asked if that meant nobody has the authority to revoke a permit. It sounded to him like once you have a CUP there is really no way to lose it.

Harris said there are conditions associated with a CUP and one

of those states if an applicant doesn't meet all the conditions the permit could become void. If that particular condition is not stated in the permit it makes it difficult to void the permit. A better way to deal with the problem, rather than individually on each application, would be to put that requirement in the zoning regulations.

**SECONDARY  
MOTION TO  
(Amend F.O.F. #5)**

Cross made a motion seconded by Hickey-AuClaire to amend Finding-of-Fact #5 to read: Amending Section 2.06.060 of the Flathead County Zoning Regulations to allow *for the revocation of CUPS and variances* ~~the Board of Adjustment to revoke permits or variances~~ will improve the procedural clarity of the regulations because *it will make it clear that CUPs and variances are revocable if a the Board grants a permit or variance subject to terms and conditions that protect public health and safety and those terms and conditions are not met, the Board should have the authority to revoke the permit in the interest of protecting public health and safety.*

**BOARD  
DISCUSSION**

Larsen stated he would rather the Finding-of-Fact state: to allow the county to revoke CUP's, not the BOA.

**ROLL CALL  
(Amend F.O.F. #5)**

On a roll call vote the motion passed unanimously.

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

On a roll call vote the motion passed unanimously.

**MOTION TO  
RECOMMEND  
APPROVAL**

Pitman made a motion seconded by DeKort to adopt Staff Report FZTA 09-01 and recommend approval to the Board of County Commissioners.

**BOARD  
DISCUSSION**

Larsen asked what the criteria for completion would be. (Text Amendment #1)

Grieve read Section 2.08 of the Zoning Regulations.

Larsen asked staff as long as an applicant has provided everything required, as stated on a particular application, would it be considered complete.

Grieve said he read that section of the zoning regulations because it already referenced a 'completed application' in that section twice. He felt then it wasn't a leap to include reference to

a complete application being vested. A complete application, in his opinion, would be submittal of everything requested on the form provided by the Zoning Administrator which is in fact an application.

Cross commented staff already reviews for completeness.

Larsen stated when an applicant fills out those applications, they need to answer questions and provide information or documentation. If everything is answered he felt it should be vested.

Grieve said he couldn't offer any guarantees specifically about what would be considered a complete application. He gave examples.

Pitman stated his office deals with the same issues as far as completeness. It is considered complete when they can proceed with the analysis of the application.

Cross asked if there were any board discussion on Text Amendment #2. (No discussion)

Cross said his feeling was to strike Text Amendment #3 and ask staff to work on it more based on public comment and board discussions.

Grieve said he would like the opportunity to follow up on the issue, particularly public comment.

**SUBSIDIARY  
MOTION TO  
(Strike Text  
Amendment #3)**

Cross made a motion seconded by Mower to strike Text Amendment #3.

**BOARD  
DISCUSSION**

Harris said staff would take all 11 amendments to the commissioners and let them know the planning board does not support Text Amendment #3.

Mower asked if the board should list some potential issues for staff to look into, such as questions of the proper venue.

Cross commented that all the issues had come up during public comment.

Grieve agreed and said he would like to look into the two (2) issues that were brought up.

**ROLL CALL TO  
(Strike Text  
Amendment #3)**

On a roll call vote the motion passed unanimously.

**BOARD  
DISCUSSION**

Cross asked if staff were confident that by scratching R-1 it would still be included with regards to Text Amendment #4. He would prefer to list all of the 'R' designations.

**MOTION TO  
(Amend Text  
Amendment #4)**

Cross made a motion seconded by Pitman to amend Text Amendment #4 to read: Within a Residential PUD District, the uses and structures permitted or conditionally permitted in the underlying *R-2.5, R-1, R-2, R-3, R-4 and R-5* ~~R-1-R-2.5~~ through R-5—or RA-1 districts shall be allowed. Residential dwelling unit densities within a proposed Residential PUD District shall be as follows:

**ROLL CALL TO  
(Amend Text  
Amendment #4)**

On a roll call vote the motion passed unanimously.

There was no discussion for Text Amendments #5, #6, #7 and #8.

For Text Amendment #9, Larsen said it could be a real problem putting up notice in five (5) public places in a rural area. He wanted to know what the definition was for a public place.

Grieve said it does say, 'including but not limited to public buildings and adjacent to public rights of way'. The goal would be to put it in a public building but within the district as well. This notice would be for the commissioners' hearings.

Cross commented that the subdivision signs were working and potentially a sign could be posted regarding a zoning change.

Text Amendment #10 (No discussion).

Cross said they should include an additional sentence that talks about the 30 days shall begin upon written notice from the Zoning Administrator so it's clear when it starts. Currently it is open to a lot of interpretation.

Grieve stated as long as staff does something 30 days or more prior to filing a complaint for a violation, his understanding was that was when staff would send it to the county attorney's office.

Harris said staff takes written complaints for zoning violations and then follows up. If staff determines there is merit we contact the violator to try to work it out. Sometimes staff writes a letter to the violator; the first letter is just to inform them we've received a complaint and to put them on notice and see if they can get things worked out. It always takes longer than 30 days.

Mower said there has to be something to trigger the 30 days to start. There will always be somebody to argue they didn't get their 30 days.

Cross stated we would have to send something out by registered mail.

The board and staff discussed sending notices and whether or not sending a letter registered mail or certified mail would be necessary.

**MOTION TO  
(Amend Text  
Amendment #11)**

Cross made a motion seconded by Larsen to add a sentence to Text Amendment #11: For the purpose of enforcing zoning, the county shall attempt to obtain voluntary compliance at least 30 days before filing a complaint for a violation. The 30 day period shall begin upon receipt of written notice from the zoning administrator.

**BOARD  
DISCUSSION**

Cross stated the board was concerned about how people would know when the 30 days started. Prior to that if everything was verbal then nothing really counts toward the 30 days until you actually send a letter and put them on notice.

Hickey-AuClaire commented then if staff has an issue with the violator the letter would be reinforcement as to when the 30 day clock starts.

**ROLL CALL TO  
(Amend Text  
Amendment #11)**

On a roll call vote the motion passed unanimously.

**BOARD  
DISCUSSION**

Dekort commented the text amendment states 'for the purpose of zoning' and wondered did that include variances. The first sentence says the Board of County Commissioners is the proper

legal authority, not the BOA.

Cross stated that it doesn't make any reference to CUP's. The board needed to look at it again as it wasn't clear.

Dekort wanted to point out it does not seem to be all together there. It made him believe the BOA is not necessarily the legal authority to take care of variances.

**ROLL CALL TO  
RECOMMEND  
APPROVAL**

On a roll call vote the motion passed unanimously.

**COMMITTEE  
REPORTS**

Hickey-Au-Claire said Committee A's (mapping) last meeting was cancelled and they were supposed to schedule another meeting but would need to wait for other members to be present.

Cross said Committee 'B' (regulatory) had been meeting to discuss the Large Tract Rural (L-T-R) zoning amendment. The amendment incorporates the ability to use an ODP (Overall Development Plan) as an official overall development plan for your property. At the last meeting, David Greer, the primary planner from Plum Creek, spoke about their interest in this. Greer said they are in favor of zoning and the ODP puts out certain capabilities and flexibility they can't get in any other zoning district. The committees went over, in detail, the language and are fairly close but they want to schedule a workshop with the entire board before they schedule a public hearing. The committee is concerned because it is about 12 pages long and needs to be further simplified. They thought it would be very beneficial to have the entire board go through it. They are meeting tomorrow to go over the final version of the ODP and are discussing the final draft of the floodplain regulations, just aligning it with state code. They are also working on another zoning amendment regarding commercial zoning.

**OLD BUSINESS**

Cross asked staff what was already scheduled so they could calendar the dates for various workshops.

Harris gave dates (Wednesdays) the board didn't already have a meeting so they could discuss possible dates to hold workshops for the Lakeside Neighborhood Plan, the Parks and Recreation Master Plan and the L-T-R.

Cross asked if the board could attend the Road Advisory Committee Meeting and hear the Transportation Plan presentation at that time.

Larsen stated he would not attend or participate in the Lakeside Neighborhood Plan workshops based on Smiths testimony and looking at the evidence.

September 23<sup>rd</sup> will be the L-T-R workshop.

October 7<sup>th</sup> was set for the Lakeside Neighborhood Plan workshop.

The board discussed having the Parks and Recreation Master Plan go straight to a public hearing.

Cross said the L-T-R and Parks and Recreation Master Plan could have public hearings on October 21<sup>st</sup>.

**NEW BUSINESS**

Harris handed out the new staffing plan for the office that he were asked to submit as part of the budget process. This was all approved by the commissioners and was just for planning board information. He explained it to the board.

**ADJOURNMENT**

The meeting was adjourned at approximately 8:30 pm. on a motion by Pitman. The next meeting will be held at 6:00 p.m. on October 14, 2009.

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Gordon Cross, President

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Mary Sevier, Recording Secretary

*APPROVED AS SUBMITTED/CORRECTED: 10/14/09*