

**Lake County Board of Commissioners
Kootenai Lodge Public Hearing
Meeting Minutes
April 19, 2005**

Members Present: Chuck Whitson, Paddy Trusler, Mike Hutchin

Staff Present: Sue Shannon, Sean Conrad, Pam Repnak

Meeting called to order 1:30pm by Mike Hutchin.

Mike Hutchin introduced the County Commissioners and the staff, acknowledged Lisa Dumontier as a Planning Board member and Jeff Smith from local radio stations. He provided an agenda overview. He announced that the County was being sued to stop this process by a Writ of Prohibition and that the motion was denied because the petition was untimely and there was no reason for the delay. Another suit involves challenge to the Montana Subdivision & Platting Law. He explained that the Commissioners face suits every day.

Sean Conrad provided an overview of the Staff recommended conditional approval and the Planning Board approved. The Planning Board added building height restrictions and other conditions of approval.

Peter Leander questioned the Staff why they wanted 50 but recommended 57 units.

Sean Conrad responded that the primary review criteria was addressed adequately and there was no basis for denial.

Peter Leander agreed with what John Fleming, Planning Board Chairman, suggested was an acceptable density of 1.4 acres per unit in that area.

Sean Conrad responded that density regulations are not in place and therefore cannot be used as regulation unless the density impacts the primary review criteria.

Peter Leander addressed review criteria #6, public health & safety. He asked Sean if Sheriff Barron said he could not adequately serve that area.

Sean Conrad responded yes.

John Snyder asked Sean Conrad if he recalled satellite maps from the last meeting and asked if they had been forwarded to the County Commissioners as per his request. He reminded Conrad about the public safety data regarding the lake use.

Sean Conrad responded no.

Jack Morton expressed concern with the historic heritage and entreated whether or not there were anything we [the public] can do to protect the historical nature of the project.

Sean Conrad suggested that while the tax credits are available, the developer has no requirement to preserve the historic listing. Any impositions from the Planning Staff would be arbitrary.

Mike Hutchin got a fax from the National Trust yesterday and they reiterated that now law requires preservation.

Peter Leander questioned whether the overlay map was delivered to the Commissioners?

Sue Shannon said no, Kitty picked it up.

Peter Leander requested a continuance. He questioned the denial of the lesser density motions of the Planning Board.

Paddy Trusler said that is the only piece of property in the area that is not zoned and therefore doesn't have a density requirement in force. He requested the Staff explain why it's not zoned.

Sean Conrad said a previous Planning Director, Forrest Anderson, attempted to zone the property but the owners had no intent to develop it and were opposed to zoning.

Public Comment #1: How can this pass without a sewage disposal site in place?

Sean Conrad said approval would be for offsite sewage on lot 4 of the Ridge

Public Comment#1: What if there's no place to put a sewer.

Sean Conrad responded that without the offsite sewer, there would probably be less density under re-review.

Public Comment #1: If the Ridge covenants stand, will the public have any input for the alternate proposal?

Sean Conrad said public review would be revisited.

Clint Fisher asked how the Staff recommended waiving the parkland requirement when the Lake County Subdivision Regulations say you have to set aside parkland and wouldn't that be a way to preserve the Lodge?

Sean Conrad said the common area is parkland so that requirement is waived.

Clint Fisher clarified that in the proposal there was no parkland dedication?

Sean Conrad said yes.

Clint Fisher requested long term historical preservation on the final plat in lieu of parkland.

Chuck Whitson asked Clint Fisher that if the developer doesn't pay attention to historical preservation, what are the consequences?

Clint Fisher deferred to that lady from Denver [historical preservation society]. He said that there are no penalties if there is no tax break.

Kirk Hansen reported a 20% tax credit is a kick back for renovation and restoration only. He felt that Milhous would to lose anything by not preserving.

Denny Kellogg asked the staff if the plan had come to the staff without a septic plan, would it have been rejected outright?

Sean Conrad said yes.

Public Question #2: What about public parkland? Is it open to the public?

Sean Conrad said no, the owners of the subdivision benefit, not the general public.

Joan Wolfon clarified John Fleming's statement from the Planning Board meeting that the sewer system is not public and should not be given a density bonus of 40%.

Sean Conrad said the developer requested 40% bonus because of the sewage system. He recommended not providing density bonus, but rather open space.

Carol Davies asked what would happen if the Milhous Group cannot amend the Ridge covenants to allow the sewage system?

Sean Conrad responded that the preliminary plat shows Lot 4. If they can't do it there, they can drop the proposal or propose an alternative.

Clint Fisher asked if "amended" proposal would go through a 60-day review also? He would have to meet all the conditions before final plat.

Jack Morton asked for clarification about what the Planning Board recommended. They requested a commercial restriction.

Sean Conrad said on page 47, it's requesting residential with 4 duplexes.

Jack Morton is concerned about a Marina Cay result. Is there anything in the conditions that requires a 30-day minimum rental?

Sean Conrad said it is in the conditions.

Jack Morton fears funneling.

Sean Conrad said on p 24-25 of the draft covenants, the right to expand language could be allowed or amended.

Jack Morton asked how the density bonus of 40% is calculated?

Sue Shannon said that Historically, Lake County held the policy for agricultural areas of 20-acre density. We take a look at what's in the vicinity and inform the developer of the options.

Jack Morton asked if the owner would be able to sell fractionalized shares in their condominiums?

Paddy Trusler restated that the cluster bonus is due to the public sewer and asked where is the precedence?

Sue Shannon said no precedence; the developer used that argument to request a bonus.

Lowell Conneger said that that fellow from the bio station thought that his sewage disposal system was not a good idea and recommended something else.

Mike Hutchin said that the sewer disposal facilities will be addressed by DEQ then closed questions to the Staff.

Dave DeGrandpre illustrated that when the Milhous Group applied for the subdivision they held public meetings. They listened and made changes. The Water quality was addressed and the setbacks were increased from 50' to 80' with a vegetative buffer. He listed the native species that will be used for the buffer for scenic views and storm water infiltration. He reported the reduction of 1000' of roadway and therefore impervious surface. He reported that for public health & safety the Milhous Group proposed to improve 2 roads, approximately 1.7 miles to county standards with a 2 ½ " asphalt matt. Concerning the public's health & safety concerning boats the docks were reduced to three and the boat slips to 24 total. Concerning density, there is no zoning and no density map. He explained the 1930s setup of the Kootenai Lodge. He reported that Lake County equates density with impacts that are covered in the primary review criteria and that the Staff and the Planning Board found that 57 units with the attached conditions would not increase the issue of public health & safety. The Milhous Group requests a buffer of 80' for Johnson Creek which is much more than the Swan Sites has just across the street at 20'. He reminded the Commissioners that the Lake Mary Ronan project had 50' setbacks and conceded to 75' with a 50' buffer. Equity. Condition #34 – height restriction of structures to 30' concerning the public health and safety, it should be with the fire department's ability to put out fires. Height is not the issue; it's pitch & how far the eves are off the ground. He wanted to see that condition modified to 20' eves and having the pitch meet the requirements of the fire department. He requested the Commissioners to defer to the recommendations of the Staff and the Planning Board.

Paddy Trusler questioned Jay Billmayer as to his interpretation of the growth policy. New subdivisions conform to existing land use in that area that's already developed. How does this project comply with the drastic difference in adjacent properties?

Jay Billmayer is an engineer for this project. The similarities are shown along the lake and the river. There's been an issue with fair comparisons and the Milhous Group has gone back & forth with the Staff. All lots that we are considering have on-site sewage systems. The median size is under an acre. Our proposed density is .72 acres. Along the river and lake there are 60 lots smaller than the Ridge would have. Also on our lot the 4 hydraulic gradient is away from Swan Lake.

Paddy Trusler asked about the gradient at Kootenai Lodge.

Jay Billmeyer said its north-northwest; it follows the river gradient. The Point potential impact is not there with the sewage, no threat to Swan Lake or Swan River. He explained the septic site and its potential and the fact that the only problem with the site is legal.

Paddy Trusler said that the sewage system is a concern but storm water management is just as big an issue. The alluvial plain is highly vulnerable.

Jay Billmeyer agreed and informed Trusler that they have included concepts to deal with it.

Paddy Trusler asked about the non deg calculation and how it would protect the historic area. He asked about irrigation, at 380gpm, not much for...

Jay Billmeyer responded limit fertilizing. Nitrogen will be moved, will try to limit at the surface. The water demand – we will ensure the size system meets peak hourly & fire department request for recharging trucks and fire hydrants. Management & prudence.

Paddy Trusler said sewage needs to be investigated wherever it goes. What is the storm water runoff plan?

Jay Billmeyer says containment is not in the design criteria. We would have to contain, control and disperse or filter and subsurface dispersal.

Clinton Fisher is an attorney representing the Swan Lakers. This proposal is controversial and the public voice exhibits concern as lot 4 of the Ridge covenants change and Swan Lakers have 350 members. The Board was sharply divided. Two motions were made to amend the density down. The Swan Lakers feel that application is complete only when the sewage is addressed. Concerning density, there is a discrepancy in the figures between all parties. The public health & safety, roads, boats, and historical designation are all affected by density. There are discrepancies in figures from all parties.

Shellie Emslie has kids and is afraid for the health & safety of her kids in learning to swim in the lake.

Bill Dale says Milhous has come into Montana and may get national attention. He perceives the end of the species of Montanans that presently exist on Swan Lake. Every eye in Montana is on you. To Milhous, you've got to be our neighbor; talk to us; reduce the density. Nothing about this project makes sense.

Peter Leander asked to redress Dave DeGrandpre and Jay Billmeyer and accused them of gerrymandering on density by cutting off the top and bottom 10%. Dave DeGrandpre says setbacks is a question of equity, but we want equity setbacks, not density. We need evolution in standards – quit using old policies. The Milhous Group says they need density to pay for improvements. It will cut into their profits. 28 units don't need new roads. The Rolfings are adamantly opposed to this project. It is a fairness issue to surrounding landowners. I swim across the lake. This density will end up with someone dead. There is no cognitive basis for 57 units. Setbacks used as parkland? Isn't that double counting? It violates our constitutional right of health & cleanliness. The sewer is economically unfeasible to hook up to this "public" system. Lighting is not adequately addressed.

Paddy Trusler questioned Peter Leander concerning the current owner's position on this proposal. He also questioned why Milhous originally bought property in the Swan.

Dave DeGrandpre answered that he had no knowledge on that.

Peter Leander said something about the first Swan Lakers meeting the representative of the Rolfings reportedly vehemently opposed the Milhous Group's proposal.

Paul Milhous says he's been in the Swan since 1988 or 1989 and his wife was born in Montana. The Kootenai Lodge is in bad shape and he wants to refurbish and develop the property.

Paddy Trusler asked Mr. Milhous what attracted him to this area.

Paul Milhous said he enjoyed coming up, has lots of family, and enjoys what they see here.

Peter Leander reported that a number of people were not able to come to this meeting.

Denny Kellogg raised wildlife issues emphasizing the grizzly corridor along Johnson Creek. He questioned the density saying that Mr. Billmayer said the larger properties are not developable. He said the setbacks for Swan Sites are not reality, that the covenants were written 30 years ago and they don't need to still use those today. He discussed endangered species.

Naquile Bjornson: Addressed the discrimination against out-of-staters and that we are all entitled to live here but we need responsible growth. Planned development is good.

Jill Wilfon says that the water depth in mid-summer leaves only one channel of water.

Melinda questioned if there would be reimbursement for land used in this road development. She said there is no vegetative buffer on the road. She feels that a right of way would require landowner compensation.

Richard Davies says that the growth policy goal is to maintain traditional homes with established density & style. Density is too high. This is setting a precedent to smaller lots.

Tim Fox, Rocky Mountain Recreation Facilities says the Kootenai is not open to the public.

Hugh Corn says the Kootenai Lodge is not on Swan Lake it's on a separate pond and is not much good for power boats. He doesn't want to see accidents and insists that this is a public safety issue.

John spoke at the first meeting. HE got aerial photos of that area of the lake and discussed the shallow areas. Kids swim & play, they don't watch for boats. He discussed the aggregation effect, hidden rock bars and large crowds. He sees boats make evasive maneuvers daily and stresses that safety is critical. There are 24 dock slips in proposal. That is an increase in the number of boats on the lake. There are already 97 lots there; adding 57 homes is an increase of 57%. Only 17 homes on the lake/river – all the rest are not on the water.

Dave DeGrandpre said the property has been for sale a long time. The property is unzoned. There could be any number of alternatives on this property without subdivision criteria review. People should be careful what they ask for – they might get it.

Nicole Malansen read from Sue Lafferty's letter. She discussed density and urged 1.5 acre density. She presented before and after photos and complained about telecommunications. She relived jet skier deaths from several years ago and pointed out the emergency issues regarding the Sheriff's ability to respond.

Doug Morton gave historical overview of Swan Sites. He took a poll and found overwhelming opposition to this proposal. He has concerns that density may be harmful to Swan Sites. He provided a lengthy discussion concerning density versus lake frontage. He discussed the Swan Sites common area that there is public use. He says there's not enough public access to the lakes and rivers. He wants to see a change in the Swan Sites zoning to 100' set back on Johnson Creek.

Kirk Hansen was the manager for Virginia City and Nevada City. He's been to the project but doesn't understand why one of those buildings are being torn down. The history will become endangered with this proposal.

Bill Barron, Sheriff of Lake County, says there is a public safety issue because the response time is longer in the Ferndale area – anywhere from 2 hours to 2 days. His office can't handle this continued subdivision growth. This is a premier growth area and the public health & safety needs to be addressed. This growth doesn't just affect the Swan Lake area it affects the whole community.

Bradley Worth discussed historical culture is a pastoral repast and said this is open space sacrifice. The neighborhood would be diminished with this Lake Tahoe like development. The Commissioners have the choice and he entreats them to protect this pristine area.

Jack Morton is not allowed to walk on that property. Admits there are errors in Swan Sites zoning but that mistake should not continue. M.C.A. 76-3-501 allows clumping and calls this project an abomination.

Darrion says there's overwhelming support to deny.

Dave DeGrandpre said the Sheriff's information is 11th hour, but since he suggests that the impacts are so significant, the Milhous Group would be willing to write a check for \$50,000 to mitigate.

Paddy Trusler wants more time.

Peter Leander takes issue with Dave.

Paddy Trusler or Mike Hutchin asked Bill Barron the difference from his presentation the other night. Barron responded that it impacts the entire county and that's a serious impact. That's the basic difference from the other night.

Public comment #5: If there's an accident there's many times that the EMS services can't do anything until the Sheriff gets there.

Mike Hutchin asked if this is going to be a gated community. Paul Milhous answered no, public can come in on the streets.

Bill Barron has no experience with gated communities in Lake County.

Mike Hutchin says thank you for your civility and dismissed the meeting for a 15 minute break.

Meeting again adjourned.

Mike Hutchin closed public comment and allowed questions from the Commissioners only. He said they will make some kind of decision today.

Paddy Trusler says the Planning Board recommendation of a 100' setback & 80' setback along Swan Lake & the River. The right of way set back on Sunburst Lane is a problem. He questioned why the 20' setback was amended to the right of way only without a buffer.

Dave DeGrandpre said there will be a 60' right of way. The subject property is parked out to match zoning. There will only be four homes along the road. Lighting is indeed addressed in the covenants.

Chuck Whitson asked if there was an alternative sewage disposal plan.

Dave DeGrandpre restated that the Ridge covenants would be amended or further review would be required.

Paddy Trusler asked about the heliport & fire station.

Dave DeGrandpre said they would have to come up with an alternate proposal.

Chuck Whitson addressed water and how much that particular aquifer can give up.

Jay Billmeyer said there has been no recharge study. There is a test well and he reviewed the well logs. There is rapidly moving ground water. Once it's penetrated, it's substantial. A porous aquifer with little draw-down. With two wells he is confident that there will be enough.

Mike Hutchin asked about irrigation rights, will Milhous use that for irrigation or use the wells?

Jay Billmeyer said he's look into it. The irrigation demand is less than available. The rights revert to FWP if not used.

Paddy Trusler hears incompatible density argument from the public comment. He questioned whether they would entertain reducing the number of units.

Dave DeGrandpre said it depends. What is Trusler basing his request on?

Paddy Trusler is basing his concerns on public comment of incompatibility with surrounding area.

Jerry Peasak is the third principal in the Kootenai Lodge project. He says they have examined alternatives. He is as concerned as Paul as to what is going to happen to this property. We had public meetings, we listened to the people, and we made a proposal. We already reduced the number of units and provided lots of mitigative projects.

Chuck Whitson asked about power boat safety and river safety concerns.

Dave DeGrandpre says most of what the Commissioners heard was exaggeration. Granted there are some shallow areas and some rocks. People aren't going to all be driving speed boats recklessly. If it would make you feel better the Milhous Group would install buoys. He showed some consternation about the two different requests he's getting from this public input – one faction wants the whole property open to the public, including the boat docks and others want no boats at all.

Chuck Whitson asked how he would slow down watercraft.

Dave DeGrandpre responded that he already limited the number of boat slips to 24 in an effort to mitigate public health & safety.

Mike Hutchin highlighted that he heard at least 5 people say that they want it for the public and he let the public know that they don't own the Kootenai Lodge and therefore don't control it. "It's not our treasure, it's Mr. Milhous' treasure." He questioned the Rolfing's opposition because this was the first that the Commissioners had heard of any opposition from that quarter.

Peter Leander said that the Rolfings sent a letter to the Swan Lakers claiming no knowledge of and no support for this project.

Ms. Bjork who represented the Rolfings at that meeting said that she had been advised to make not statements.

Mike Hutchin said that a vegetative buffer was a good idea. He acknowledged that the density proposition had not been adopted so the impacts have to be enough to mitigate. He also stated that we don't control water as a Commission, but that control is within the water governing bodies. My opinion, if we want to save the Lodge, the government or other organization needs to step up. Think about it, he urged the public; Virginia City is a State Park under governmental control. If the people want to keep this as a public place, they need to get someone to purchase it and keep it that way. He stated that as Commissioners, they cannot adjudicate the historical aspects of this project.

Kirt said the old buildings are difficult and he applauds doing it right. We wanted to pull at the heart-strings because the buildings are beautiful.

Mike Hutchin reiterated it's not our collective interest.

Public Comment said what comes from the heart is my kids might be hit on the road or the neighbors kids be run over by a jet ski boat. Listen to the constituents.

Mike Hutchin said that density means impacts to each person. To aggregate the lots surrounding Swan Lake is an individual choice. Mitigation is afforded to the developer under the law. [He had

a member of the audience read the actual law from M.C.A.] Hutchin then questioned Milhous whether they would be willing to address condition #13 and change the covenants.

Clint Fisher inquired about subsurface sewage and got a response. Mike Hutchin asked if that was likely to happen & Clint Fisher replied, “no.” Hutchin asked what other options if cannot use lot 4 of the Ridge? Dave DeGrandpre responded that the option to change the covenants is not exhausted. Hutchin stated that it is possible to adjudicate the options.

General discussion revolved around mitigation.

Paddy Trusler asked how do you mitigate a divorce? Case law says we mitigate. Many things are requested – setbacks from 80’ to 100’ recommendation, the parkland justification is weak. I need more time to digest; will you grant an extension time for mitigation?

Dave DeGrandpre questioned if there would be specifics to mitigate?

Paddy Trusler said they would be taken from the staff report and public comments.

Dave DeGrandpre clarified that the Commission was now asking for an extension.

Bill Astle is an attorney in Kalispell representing the Milhous Group. He says that to extend the Milhous Group would be waiving their statutory right in the amount of time allotted for the Commission to make a decision. He asked if they can answer this today. If they can’t amend the Ridge covenants we have to come back for further review. The Court asks could you reasonably act with the information before you. We would like to attempt to resolve today. If you could narrow down as to your questions, give us a five minute break and we’ll give you an answer. As for the set backs and the neighborhood we have two planning staffs that say this is okay – one we hired and one you hired.

Paddy Trusler questioned the time they legally have in which to act.

Sue Shannon responded May 5th.

Paddy Trusler responded to Bill Astle that just because my staff says something doesn’t mean I have to believe it. We are not trying to paint you into a box. If you don’t grant an extension I’ll move to reconvene May 5th. He wants a time frame specified, maybe May 15th. Mitigation matters can be publicized one week. He suggested money in lieu of parkland.

Mike Hutchin cited 4 examples from the Northridge mitigation process.

Bill Astle asked if the Commission would set specific items?

Mike Hutchin said Sunburst Drive set back, vegetation on the north boundary, number of docks, river safety, number of units, sewer location, storm water confinement & runoff, off site disposal system being public.

Paddy Trusler suggested this take less than 30 days.

Bill Astle okayed the mitigation delay.

Dave DeGrandpre confirmed that the mitigation points include the Sheriff, Sunburst, docks, vegetation to the north, # units, public nature of sewer system.

Sue Shannon added parkland and storm water runoff as per previous conversation. Paddy Trusler & Mike Hutchin agreed that DeGrandpre said that.

Chuck Whitson suggested that grizzly needed to be addressed.

Denny Kellogg said the grizzly are endangered species and need to be addressed.

General discussion about what is in the covenants and bear smart communities.

Dave DeGrandpre voiced that he thought that the Staff and Planning Board got that covered.

Sean Conrad said that the Fish Wildlife & Parks has looked at it and the results are indeed based on their recommendations.

Paddy Trusler said look at the staff report.

Sue Shannon added fractional ownership & funneling at the written request of Peter Leander.

Paddy Trusler addressed the right to expand verbiage.

Peter Leander said the language doesn't negate the right to expand.

Mike Hutchin requested a letter from Bill Astle confirming this discussion of the time frame.

Dave DeGrandpre offered to provide mitigation answers by Friday, April 22nd if the Commissioners can meet again Tuesday May 3rd.

Dave DeGrandpre asked if the public would again be granted the right to comment and Trusler answered yes. Trusler continued to say that the mitigation response would be available online by Saturday April 23.

Paddy Trusler moved to reconvene on May 3 at 1:30pm. We're all in favor of that.