

**LAKE COUNTY PLANNING BOARD**  
**October 11, 2006**  
**Meeting Minutes**

**MEMBERS PRESENT:** John Fleming, Bob Kormann, Lisa Dumontier, Steve Hughes, Fred Mueller, Jack Meuli, Ken Miller

**STAFF PRESENT:** Sue Shannon, Alex Hogle, Joel Nelson, Lita Fonda

John Fleming called the meeting to order at 7:04 pm.

**Motion by Fred Mueller, and seconded by Steve Hughes, to accept the minutes as presented. Vote carried, all in favor.**

**WHITE COYOTE MINOR**

Alex Hogle presented the staff report.

Bob Kormann pointed out that the math gives 80.07 acres. Alex explained that discrepancies are often encountered. Assessors' records, rather than the preliminary plat, were used here. Ken Miller inquired about the distance from the Arlee sewer system. Alex noted that he contacted Gary Weining (sp?) to discuss potential for this division to connect. Gary indicated that at this time, it is not an option. Steve Hughes asked where the irrigation is located. Alex described this with one of the maps. Marc Carstens had no specific comments to add on behalf of the applicant.

Ken wondered if they anticipated getting enough water, given the wells in the area average 9 gallons per minute. Marc replied that with substandard wells, extra storage can be provided. This will be reviewed at DEQ.

*Public comment opened:*

None offered.

*Public comment closed.*

**Motion by Jack Meuli, and seconded by Fred Mueller, to recommend approval of the subdivision with staff recommendations. Carried, 6 in favor (Jack Meuli, Fred Mueller, Ken Miller, Steve Hughes, Bob Kormann, John Fleming), and 1 abstention (Lisa Dumontier).**

**BROWN'S ESTATES II MAJOR (INFORMATIONAL)**

John noted that the recommendation for this project will be made at the November meeting.

Alex presented the staff report.

Fred asked how far this was from the sewer lines. Alex noted that he contacted Gary Weining (sp?) to discuss potential for this division to connect. Gary indicated that at this time, it is not an option. This subdivision is relatively close to the sewer. White Coyote subdivision (previous item) is quite far from the sewer system. Fred voiced concern about 1-acre lots in the gravelly soil there, if the well would be contaminated. On the irrigation easements, Fred checked whether 20' was standard rather than 15'. Alex explained that 15' is what exists from the prior subdivision. 20' is standard. Fred would rather see 20'.

Ken asked for an explanation of why the 1' no access easement was put in place along the southern boundary. Based on the two prior subdivision staff reports, Alex believed this was placed to limit the amount of traffic accessing separate private driveways. No private drives are being proposed; the proposal is for an actual road. The intent was to minimize access onto a short stretch of county road. John asked about the required width for driveable surface. Alex explained the original approval for the prior division specified 26' built to county standards. There was a subsequent request and amended conditions of approval to allow it to be built to the current 24' width. 26' would be standard for 5 or more lots. Fred felt that this doesn't work out later when the road is allowed to be narrowed. Alex said that the road is paved and in excellent condition, to answer Ken's query.

John clarified with Alex that for 1/4 mile on each side of the proposed road, counting existing roads and driveways, there are 15 different approaches along that stretch. A road for lots 3-6 to use Williams Way would require a different lot configuration because with the current one, it would cut down the buildable area and attractiveness of the lots. Alex reminded there's a variance request to maintain the current width of Williams Way. By minimizing additional approaches, the developer hopes the 24' paved surface might stand as a permitted continued use.

Alex clarified for Steve that the developer is requesting the change to the 'no access strip'. Steve was concerned why 4 more lots would be allowed if there were too many approaches now. Jack Meuli thought that this was so there was 1 access instead of 4 for the prior approval. Sue clarified that the Board recommends on variances. It might be a question for the developer why they're asking for this, and why they can't access from the internal road.

Lisa recalled that when the first part of this subdivision was done, before the density map, the 10-acre parcel was supposed to stay in one piece at that point. Alex had not found this, but did find explicitly that lot 5E would access Williams Way.

Bob was concerned that the new approach may affect public health and safety, per the staff report on pg. 4. Ken pointed out there was no road supervisor comment yet. Alex said that it may or may not; he's not qualified to say that it will. He's also looking 10 or 15 years down the road, and what effect it may have then.

Marc Carstens commented on behalf of the developer. Regarding the 15' easement, he said this is typical and standard. Wider ones have happened for water lines or sewer lines buried at depth in unstable soils. This is an irrigation main line with a buried depth of about 2 feet. It was reviewed and approved before. For concerns of road impact on health and safety, he will look into this with a traffic engineer. A variance will be needed either way, since the alternative

requires a 90-degree corner whose requirements (305 foot radius curve) will chop up two of the lots. The 1' no access easement was offered during previous review to limit access onto county roadways. Easements are revokeable with mutual consent of the involved parties. He didn't know why the road was built to 24'. For the land use planning during the prior division, he thought that at that time, it was not possible to further develop the lots, but a 'not to build' clause was not included. Lisa thought this made sense.

Bob asked why 5E-6 and 5E-5 shared a well, and 5E-3 and 5E-4 do not, and about a drain field location versus a shared drive between two lots. Marc replied the developer preferred non-shared wells due to maintenance issues. The drain field location probably has more to do with non-degradation calculations, and he elaborated on this. The way the drain fields are laid out, there isn't room for another well.

Lisa was bothered by the other access. Jocko Road is a well-traveled road. That's another school bus stop. Those roads are going to be really close and it doesn't make sense to put another stop there. She'd be more excited about a variance on Williams Way than another access onto Jocko Road, which doesn't make good sense. Marc said he would take the concerns to his client. John agreed with Lisa, and hoped the applicants could come up with more options for the Board. Sue confirmed with Marc that they would be crossing an irrigation ditch to build that road. It might be better to look at a different route, cost-wise. It would be more road-building, but you wouldn't have to cross the ditch.

*Public comment opened:*

None offered.

*Public comment closed:*

Ken voiced an overall concern with the community growth areas allowing individual wells and septic. It goes against the idea of clustering things close to town if they don't take advantage of the services. Sue reminded that the growth areas were designated within 1/4 mile of existing infrastructure.

John checked that this is in a growth area but they're just a little bit past access to local sewer and water. Sue added that there also has to be capacity. If they can't be served at this time, then they can do individual.

Ken pointed out that this might be something to address with the overall density map changes, more so that this subdivision.

Lisa understood that the original developer has not yet provided irrigation to the current lots. Marc said he intends to check and clarify this. Lisa asked if this would be required. Marc thought this person would be required to service the lots within his division that will have irrigation. Preliminary correspondence with Flathead Irrigation Project has happened. The developer tried to remove 4 lots. FIP may allow 2 to go and 2 to stay. It may be the developer puts the infrastructure into his lots. Lisa clarified that Brown's Estates I and Brown's Estates

were supposed to provide irrigation when it was done. It was stubbed in but the developer never provided it. These were 2.5-acre lots. Marc asked if they had portable main line on this project. Lisa replied no one has irrigated. Alex didn't notice anything above ground. There is a pump house in the SW corner of the parcel. Marc recalled this was above ground aluminum main line. It doesn't make sense to have an existing pump house and no existing main line.

### **HISTORIC KOOTENAI LODGE ZONING DISTRICT**

John noted the Board needs to make a recommendation to the Commissioners.

Sue Shannon presented the staff report and staff amended text. Since the staff report was mailed, she met with the developer's agent, and they agreed to the staff amended changes. She highlighted and clarified the staff amended text.

On page 1, first paragraph, the date given should be corrected to April 10, 2005 from April 10, 2006.

There is potential confusion with structures that exist within the setbacks from the lake and whether or not they can modify them in the future, and to what extent. It is understood at this stage that they are going to be renovated, and expand as was proposed as part of the review. An addition aims to clarify this.

In Section IV, the paragraph at IV.A may be moved. It isn't necessary there. There's concern that may change in the future. The section deals with permitted uses and prohibited uses.

On page 14, they want to add the new language, "After all construction approved by the 5/10/05 preliminary approval statement is complete, expansion of any existing structure is permitted provided that the expansion of the ground coverage of the structure does not exceed 50% of the ground coverage of the existing structure...."

Some modifications have been requested by the developer for I. Vegetative Buffers that comply with the intent of requiring this district. In I.A, the first phrase should read 'existing vegetation' rather than 'vegetation'.

Additional language requested at the end of the first paragraph of I.A is "The setback along Swan Lake consists of a grassy lawn and old-growth trees, and may be maintained as such." The next paragraph should begin "The modification of any buffer...."

On IV.B.2, Ken asked if this contradicts IV.A.2 prohibited uses. Sue explained that the community center/lodge referred to in IV.B.2 is only available to people within the subdivision. This was approved as part of the subdivision proposal.

With height restrictions, Kootenai Lodge is excepted from the 30' limitation. Ken felt some restriction, such as the current height or some number, should be placed on the lodge.

John checked about 'interval basis' and that these cannot be used as timeshares. Sue thought this was the intent. John said one of the issues was use of the river, and timeshares would increase this concern.

John checked that this local zoning of the project which was okayed in 2005. Sue explained that during the Commissioner's review of the subdivision, to address public concerns regarding long-term maintenance and who will be regulating it for compliance with conditions of approval, it was suggested that a zoning district be formed. It would function like the other County zoning districts. The plan is to make this zoning district as exact to the project as okayed by the Commissioners.

Dave DeGrandpre spoke on behalf of the applicant. The reason for zoning the property is because there were lots of agreements and proposals throughout the subdivision review process. Setbacks, buffers, birms and height restrictions are examples. One concern of the public was who will enforce these. Paddy Trusler had asked if they would be willing to zone the property, and they agreed to give the County the authority to make sure those requirements are complied with over the long-term. He reiterated this is an amendment to the density map and regulations, which encourage landowners to form zoning districts if they meet certain criteria, which have been addressed. They submitted some bare bones zoning regulations. Staff has added some clarifications and administrative additions. The applicants intend to build what was approved in the revised conditional approval of April 2006. He summed up that there are two components: one is an amendment to the density map and regulations, and the other is to comply with the April 10, 2006 conditional approval statement from Lake County in order to give the County control and to ensure the agreements made with the County are adhered to.

Sue verified with the applicants that a height restriction to the lodge's current height was acceptable.

An applicant responded that he didn't know how many boat slips they would have, but the maximum number would be 24, in response to Bob's query. Bob asked if fuel would be hauled to the boats or if the boats would be hauled to the fuel. Bob wondered if there was a place on the property away from the shoreline that gas was available, and if someone would be available to take the gas down in a vehicle to the boats, to minimize spillage, rather than everyone carrying the fuel down individually.

*Public comment opened:*

Jack Toholski: He spoke on behalf of the Swan Lakers. He clarified that this would amend the density map. The property is zoned at a different density than the developer proposes. The imposition of a zoning district here is a bit odd. It does look like spot zoning, which is not legal, to create a zoning district for one landowner. Density map allows 28 dwellings on the parcel rather than the 42 proposed. One of the purposes of zoning is to lessen congestion, prevent overcrowding and avoid undue concentration of population. By changing the density map, you're doing the opposite. There is a lawsuit pending against this subdivision in the court system. He asked that if the Board does decide to approve this, they recommend as a condition of approval that the density map shouldn't actually be amended until the lawsuit is resolved and the final plat is granted.

Keith Laverty: He agreed with Ken regarding clubhouse concerns. He wondered if there should be some good neighbor policy instituted with regards to amplified music and hours of operation. He asked about some of the changes that they've requested regarding vegetative buffers. Was there a reason that it says 'trees, shrubs, native grasses and forbs' instead of 'native trees, shrubs, grasses and forbs'? He asked that this change be considered.

Sue Laverty: As a resident of a zoning district, she's aware of the benefits of a zoning district. She supports the creation of this zoning district. She agreed with Jack Toholski that she would like to see the zoning implemented upon final plat approval. Otherwise, if that doesn't happen or if the property were to be transferred, you've already instituted a zoning district on a parcel that isn't developed yet. She had understood that the zoning district was created to provide a more enforceable and regulatory document, and that gave more teeth than CC&R's would, in order to be amended or changed. When she read item 5B, the way it's currently written, it seems like a simple majority of the owners within the district could amend the regulations. Is this in addition to the standard procedures that are found in the other zoning districts, which require amendment and review by the Planning Administrator, the Planning Board and the Commissioners? She hopes that this is how to amend this. Otherwise it would be like regular CC&R's. Under permitted uses, B, she was confused on the rental period portion. The rental period is no less than 30 continual days in each rental period, yet less than 30 days is prohibited. Why don't you say more than 30 days is okay?

*Public comment closed.*

Sue explained that typically when the Commissioners do a resolution to adopt a zoning district, they have an effective date. She intends to make this effective upon final plat approval, or something along those lines. It's important that we don't create new zoning district until they've actually had final plat, roads are done and conditions of approval are met. John asked if this would cover Mr. Toholski's concern, and Sue felt it would. Regarding Sue L's comment on the amendment procedure, it wouldn't hurt to beef up that administrative item to state that amendment procedure shall be as defined in Montana code, or some such language to clarify that the amendment has to go through the requirements for state law which require a public hearing with the Planning Board for a recommendation to the County Commissioners. Sue said the 5-year reviews are not in state law, in response to Ken's question. She wasn't sure that it would be necessary in this case, and Ken agreed.

On pg. 14, IV.D, existing structures, John asked about the expansion of 50% that is allowed. He concluded that it was there because they asked for that.

Ken supported Keith Laverty's point on specifying native trees and shrubs.

Given a portion of the existing lawn around Kootenai Lodge occurs in the buffer strip, Alex pointed out that a motorized lawn mower may need to be allowed where no motorized vehicle use is to be utilized. John asked if this was a conflict. Sue suggested adding something for equipment necessary to maintain the lawn.

John asked about dealing with the music concern. Sue mentioned that typically the Commissioners have shied away from noise ordinances. Typically the Planning staff isn't working when problems occur, and don't have the meter to read decibels. Lisa suggested that this would be more for the sheriff. Sue added that it might be something to put in the covenants.

**Motion by Jack Meuli and seconded by Fred Mueller to recommend approval the Kootenai Lodge zoning as amended, and with additional changes:**

- **Zoning effective upon final plat approval**
- **In the average building height section, add that the Kootenai Lodge shall be maintained at its existing height**
- **In the vegetative buffer section, require native trees, grasses and shrubs**
- **Include an exception to motorized vehicles in the buffer area in order to maintain the lawn**
- **Put language in the amendments section requiring amendments to be processed as defined in the MT Code Annotated.**

**Vote carried, 6 in favor (Bob Kormann, Lisa Dumontier, Steve Hughes, Fred Mueller, Jack Meuli, Ken Miller) and 1 opposed (John Fleming).**

#### **CIMMARON MAJOR (INFORMATIONAL)**

John noted that the public hearing will be held on Nov 8, although the Board would like public comment this evening, too.

Joel presented the staff report.

Fred asked about the bonded items. Sue outlined 3 items for which they have bonded. 1) Creation of a FIP delivery point between lots 3 and 4, which are the subject properties of this proposal. That delivery point shall be improved with a functioning turnout purchased through the Flathead Irrigation Project. 2) Electric power to be installed to the delivery point between lots 3 and 4. 3) Prior to June 1, 2006, the developer shall provide evidence that the property has been sprayed for weeds. Lot 1 shall be sprayed for knapweed and the NW corner of lot 4 shall be sprayed for whitetop. The total amount of the bond is \$25,700.75. In the weed management, this spring lot 1 was sprayed for knapweed, so an amount was taken out.

Jack felt confused on the bonding. If they bond to do something, and don't do it, who is responsible if they sell the property? Sue explained that the bond expires on Jan 14, 2007 and if these items aren't done, it's the County's responsibility to get the money (from a joint checking account set up for the bond) and get them done. The joint account requires at least two signatures to get the money out. Those could be Hebron's and a Commissioner's, or two Commissioners. Fred pointed out that with the rising cost of construction costs, the money might be insufficient.

Sue further explained that the amount is somewhat at the Commissioner's discretion. They require bids to be submitted from different agencies to gauge how much it will cost to do the improvement. They can refuse it if they want, and not allow the bond. State law does have a provision that developers can bond. Once it's bonded, they can sell the lots. The intent of bonding is to allow them to file the plat without completing all the improvements. They can sell

the lots and continue to do the improvements. Fred thought they ought to improve Forman Road up to 26' width, from Back Road. 14 more lots will have quite an impact, and the road is narrow.

Lisa checked that this is in 5-acre density, with 20-acre density on two sides. Why is this in 5-acre density? The staff seemed more comfortable with less density. Sue thought this was based on Back Road improvements and Hwy 93 improvements, and also the development that's occurred in the Ingram subdivision next door. When the density map was done, general areas were looked at, not specific parcels. There is a provision in the density regulations that say subdivision review is still required. The primary review criteria still have to be looked at. John said that you don't have to grant 5-acre density just because it's in 5-acre density.

Lisa felt the road issues are a big issue here, with a huge amount of increased use on the road, which isn't very wide, only 21' or 22'.

Steve wanted to see the Hebron report at the next meeting. It seemed to him that the Hebron Estates recommendation was that they have an irrigation system installed, not just a pump site and power to a pump site. He wants to see what was actually approved. If the Board makes a recommendation as part of the approval process for a subdivision, and says within that they require a school bus turnout on the subdivision, who enforces that? There was a subdivision in Forman Estates, and the bus picks up the kids on Forman Road.

Sue responded that this is reviewed by the school district Transportation Board. She will attend their meeting on Oct 24 to talk to them about subdivision-related issues. She's getting conflicting messages, and has heard that only the Transportation Board can make the school bus decisions. Steve raised concerns that if the Planning Board feels there are safety issues, this should take precedence. Further discussion ensued. Sue explained that this is part of opening the door of communication between the Transportation Board and the Planning Board, by going to the meeting and describing what we want from them, and to understand more on the function of the Transportation Board. Steve felt certain that if this subdivision gets approved, and the bus picks up on the County road, someone will get hurt sooner or later. John summarized that Steve was wondering if the Board can do anything less than recommending a denial for a subdivision based on the safety concerns.

Lisa described her experiences when she was on the Transportation Board. It's a pretty loose meeting, twice a year. Sue reiterated that she's going to the Transportation Board meeting to talk with them and find out who has the authority to say what. Her recommendation to them would be any major subdivision requires a school bus turnout at the county road where the internal subdivision road meets the county road. She affirmed for John that this means getting the bus off the road, in a turnout. John thought the local school boards may also make the decision. Lisa explained that the Transportation Board does make the decisions.

Marc Carstens commented on behalf of the applicant. This subdivision has a unique design feature of a roundabout near the County road. If the subdivision residents choose to drive their children to the bus stop, they can do so without leaving the private road system, thereby alleviating pressure on the County road. The applicant's desire is to allow the school bus to use

the roundabout, so the bus is completely off the county road. The mailbox drop is also on the roundabout and has been approved by the postal service. They have tried to keep the traffic internal.

On the bonding for the irrigation systems, he didn't think it was fair to blame his client for what didn't happen with Hebron. He showed on a map what alternative to Hebron's plan that they would prefer to do, putting in a gravity system in a different area. The head gate has to go in at certain times of year when the ditches aren't being used to deliver water. They do want to move the location where it's more feasible for their system. They don't have their system in hand yet—they have hired irrigation specialists to design the system, with a plan to gravity into each of the lots. If the lots require higher pressure, they can put in their own little pump. The system being designed allows head pressure to every lot, and the lot owner can take it from there.

They feel they will be able to protect wetlands.

Marc read excerpts of comments from the County Road Supervisor on the roads. Because the road is 20' wide and not built to County standards, 1) future residents of the development must waive their right to protest RSID, 2) an approach permit for the private road connecting to the County road is required, 3) the developer must cede to the County a 30' wide right of way bordering the development along Foreman Road and 4) the road into the development must be built to Lake County standards. Marc said that state law 76-36-25 does state that the developer can be held responsible for the impacts of public infrastructure that a subdivision does. It also says that it must be proportional, and so this would have to be determined.

They are trying to keep the school buses, the postal service, to keep things internal as they can, and they are aware of the situation on the County roads.

The zoning is confusing. Marc didn't know how to address it. If it says 5-acre density, he assumes that's what it means. They are still wrestling with the phraseology of the lots. If the development gains approval and comes to conclusion, the lots would be immediately transferred in order to put an easement on the deed. They prefer this to a deed restriction. The Clarks' attorney has some deep concerns. An easement can be specific. No buildings requiring water or sewer would be allowed. This easement would be sundowned on a date that would be established.

Marc thought he needed to visit with the Planning staff on irrigation.

Based on recollections, Marc said that Hebron made some attempt with weeds, in that he contacted Lake County Weed Control for spraying. The County was acquiring more equipment, which could handle the steeper areas. This did not work out. Marc stated that if the applicants are unable to use Lake County in the next weed season, they will find some other applicator.

He added that on pg. 10, on the last bulleted covenant, which says no lot shall be further subdivided, that they would like to strike that one out.

Steve asked who was working with them on the irrigation plan. Marc identified Irrigation Specialists in Hot Springs. Steve talked with Bob there, who said they'd received one phone call and have nothing on this project. Marc's office had contacted them to do it; Marc said he would follow up on this. Lisa asked why irrigation is a concern on 1-acre lots. He agreed that it's an unusual feature. The client wanted a lot that was unique, and to use irrigation to maintain that seemed to fit in with his plan of development. If the water is available and especially if they can get head pressure, it's easier to maintain property, he thought, if it could be irrigated. Lisa pointed out that the 1-acre is reduced down by structures.

*Public comment opened.*

Paul Walhood: He owns lot 2, Hebron Estates. They sprayed a minor portion of lot 1 for weeds. He did his own lot this year. Road issues are a major problem on Forman Road. He's not excited about looking at 15 homes, but that's growth. He has concerns with children and other people venturing off their properties. He has concerns for his horses, with people getting hurt, and with animal problems, which have been discussed, but it's still on his mind.

*Public comment closed.*

Steve added that Valley View has a fair amount of wetlands.

John asked for further comments on what should be looked into before the Board sees this again. The roads seemed important. Steve wanted to see the Hebron approval, and asked if the staff could bring the Board what an RSRID entails.

### **OTHER BUSINESS**

**Motion by Ken Miller, and seconded by Lisa Dumontier to adjourn. Meeting adjourned at 9:52 pm.**