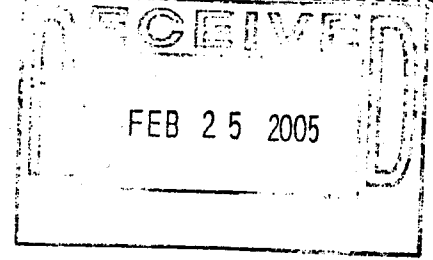




February 22, 2005

Sean Conrad
Lake County Planning Department
106 4th Avenue East
Polson, MT 59824



Re: February 18, 2005 notice of incomplete subdivision application, Historic Kootenai Lodge Condominiums

Dear Sean:

This letter is intended to address the concerns outlined in your February 18, 2005 notice of an incomplete subdivision application. As we discussed today in your office, there is a difference between a subdivision application that is incomplete and one that you feel your office can or cannot support. I request that you amend or rescind your February 18, 2005 letter and replace it with one that more accurately details the submittal requirements listed in the Lake County Subdivision Regulations and the Montana Subdivision and Platting Act.

As requested by the Lake County Attorney, the following is a response to your letter in the order in which you presented the specific items.

1. Billmayer Engineering is in the process of providing the information you requested on a new version of the preliminary plat to be submitted on or before February 25, 2005.
2. The Milhous Group would like to utilize the existing roadway network to the extent possible and provide a design that will provide for safe traffic flow. We are in the process of developing a variance request from the adopted roadway standards which I will submit on or before February 25, 2005.
3. Warren Sheets Design is developing a comparison of structure sizes showing the sizes of the existing and proposed structures. I will provide this to you on or before February 25, 2005.
4. The Milhous Group and the Rolfings are discussing how to approach this issue. However, it is my belief that, depending upon the terms of the contract, the buyer has the right to apply for subdivision review with or without the signature of the landowner. As you are aware, 76-3-612, Montana Code Annotated requires the developer to provide an abstract of title for the processing of final plats. Section II-C-3 of the Lake County Subdivision Regulations also requires a certificate from a title abstractor. This section of the Lake County Subdivision Regulations is entitled "Final Plat Review."

It is at the final plat review stage when the property ownership, names of lien holders, easements and other such issues are vetted, not during the preliminary review stage. The subdivision application asks for the signature of the landowners because in most instances the landowners are the subdividers. However, their signatures are neither required under Montana statutes nor the Lake County Subdivision Regulations.

5. The developers have the right to apply for whatever number of units they choose, so long as the proposal does not violate any adopted subdivision or zoning regulations. While your insight provides us with valuable information to be addressed as the review proceeds, so long as the application complies with all state statutes and locally adopted plans and regulations, the number of units proposed has no relevance in determining the completeness of an application.

Moreover, the developers are proposing to install and dedicate a \$1 million piece of infrastructure that has the potential to actually improve water quality in the area through adjacent landowners being able to connect to the system, as well as through routine monitoring and maintenance. As a point of comparison, the Arlee Sewer District needed approximately 20 years to build a sewer system and the West Shore Sewer District actively tried to develop a public system throughout the 1990s without success. This public good offered by the developer warrants a higher density than that seen to the north and south, where parcels are developed with individual drainfields that may or may not be maintained. It is also important to note that this property is not zoned, while the property to the north and south falls under the Swan Sites Zoning Regulations and has specific density requirements.

6. Nowhere in the Montana Subdivision and Platting Act or the Lake County Subdivision Regulations are sketches of a proposed subdivision required to be submitted for an application to be deemed complete. Section IIA.3. of the Lake County Subdivision Regulations states, "The subdivision administrator will review the (pre)-application and submit a letter to the developer listing the materials required for the preliminary review and outlining any apparent potential problems that may be encountered." The February 8, 2005 pre-application letter from your office did not request such a drawing and therefore it cannot be required of the developer for the application to be deemed complete.

Please understand Paul Milhous owns property across the Swan River from the Kootenai Lodge property and he is also concerned about the development's appearance. He has commissioned such a drawing and it will be submitted to your office by or before the March 9, 2005 public meeting before the Planning Board.

7. There are no steep slopes on the property that could limit potential building sites. All new structures are proposed to be located outside of any floodplain. Therefore, it is unclear why you ask for the building sites to be staked. If there are health or safety issues associated with the proposed building sites we are unaware of please make them known. However, because the Lake County Subdivision Regulations do not

- require building site staking and because you did not request staking at the pre-application stage it cannot be required for the application to be deemed complete.
8. The docks were included on the preliminary plat only to show a general concept that may or may not take place. Perhaps the docks should have been omitted. If any docks or other lake related improvements are eventually proposed, a Lake County Lakeshore Construction Permit will be required and a review process is in place to ensure all construction takes place in an environmentally responsible manner. At this time no boat ramps are proposed.
 9. Both the Lake County Planning Department and The Milhous Group have taken the position that a subsurface drainfield is not prohibited by the existing covenants on The Ridge subdivision. If it is not prohibited, it is unclear why an amendment would be necessary. We understand this is an issue that will be addressed throughout the subdivision review. However, we reiterate an amendment is not necessary. We request the review to proceed in the meantime, a position which was supported today by the Lake County Attorney.
 10. Billmayer Engineering will provide a proposal for the route and methods to avoid conflicts while constructing the force main leading to the off-site sewage treatment facility by Friday, February 25, 2005. I believe the non-degradation analysis we submitted with the application shows the proposed sewage treatment and disposal system will have a non-significant impact on neighboring wells and groundwater. As you know, the proposal will have to undergo stringent review by the Montana Department of Environmental Quality if preliminary approval is received, which will demonstrate a non-significant impact on surface water and groundwater. Therefore, unless you seek a different type of information, I believe the application contains all of the required information.
 11. Billmayer Engineering will provide you with a proposal for traffic directional signs within the subdivision by Friday, February 25, 2005.
 - 12-14. I mailed requests for review from the agencies you cited on January 14, 2005. More than five weeks later I have not received responses, although the Lake County Weed District did send a receipt for my \$100 site assessment check during the later part of January. I cannot make these agencies respond and ask that subdivision review proceed while I continue to request their letters of review.
 15. I will submit a response to the Lake County Solid Waste District's letter of review by Friday, February 25, 2005.
 16. Four existing structures are proposed to be converted to duplexes. A new preliminary plat delineating this will be submitted on or before Friday, February 25, 2005.

17. Water Quality

The Milhous Group believes all of the mitigation measures proposed in the environmental assessment intended to maintain existing levels of water quality adjacent to the subdivision are sufficient to do so. During my telephone conversation with Fisheries Biologist Scott Rumsey of the Montana Department of Fish, Wildlife and Parks while I was preparing the environmental assessment, we discussed building setbacks, soils conditions, site topography, vegetation protection, stormwater management, sewage disposal and other measures meant to protect water quality. He stated he did not know what distance was appropriate for a setback distance due to all of the variables. To clarify, the proposed building setback is at least 50 feet *on each side* of Johnson Creek and outside of any established 100-year floodplain with the vegetation within the 50-foot setback distance largely left undisturbed. We reiterate that this distance, given the gentle topography, soils conditions, thick vegetation and proposed sewage disposal and stormwater management techniques is sufficient to support existing water quality levels.

Page two of your letter to the Swan Water Quality Technical Advisory Group (TAG) states you believe the 50-foot setback is not sufficient to protect water quality. If you continue to take that position I suggest that you provide evidence (i.e. water quality data) substantiating this position. Otherwise, it appears to be based on a personal aesthetic and therefore rather arbitrary. Personally, I have never seen a lakeshore development proposal with such substantial measures meant to protect water quality including removal of contaminants from stormwater and a public sewage treatment system on topographically mild terrain with vegetative buffers along much of the water. Additionally, this is not an issue that is relevant in determining the completeness of an application.

Historical Features

Submitted with the application was a letter of review from the Montana State Historic Preservation Office (SHPO). The SHPO, not the Confederated Salish & Kootenai Tribes' Historic Preservation Office, has jurisdiction over historic preservation in the Ferndale area. Therefore, if historic artifacts are uncovered during construction, the SHPO will be contacted and all protocols and requirements will be observed.

In your letter you state the homes would negatively impact the view shed from Swan Lake and the Swan River. As you are aware, Lake County does not have requirements stating to what extent development may or may not impact the view of the subject property from adjacent properties. Additionally, while the developers intend to construct buildings that perpetuate the design of the existing historic structures, there is no such requirement I am aware of that mandates this. I think we would both agree that this item is not relevant in determining an application's completeness.

Emergency Services

I addressed the Sheriff's comments in the environmental assessment but will submit a more thorough response to the Lake County Sheriff's letter of review by Friday, February 25, 2005.

In summary, we intend to submit information relating to items number 1, 2, 3, 10, 11, 15, 16 and part of 17 (the Sheriff's letter) by Friday February 25, 2005. In the meantime I ask that you amend or rescind the February 18, 2005 notice of an incomplete subdivision application and provide a new letter stating what items are required under the Lake County Subdivision Regulations and the Montana Subdivision and Platting Act for the review to proceed. If there is additional information that would help you to conduct the review, please let me know and I will respond quickly.

Sincerely,



Dave DeGrandpre