

# LINCOLN COUNTY PLANNING BOARD MINUTES

TUESDAY, JUNE 13, 2017 – 5:30PM

LINCOLN COUNTY COURTHOUSE – LIBBY | NORTH ANNEX VIDEO CONFERENCE

1. MEETING CALLED TO ORDER: 5:30PM

2. BOARD MEMBERS PRESENT:

Michael Hobbs, Chair

John Damon

Kenny Rayome, Jr

Mark Romey

Gary Mason

Ernie Anderson

Kate Arpin

Josh Letcher

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STAFF: Kristin Smith, KMR Consulting; Jake Mertes, Environmental Health

3. PUBLIC COMMENT ON NON-AGENDA PLANNING BOARD ITEMS:

NONE

4. AGENDA

**North Shore Landing Subdivision Review & Recommendation**

**Chairperson Hobbs** introduced Kristin Smith and opened the discussion by indicating that this will be the final review and recommendation, inviting discussion amongst the board members first relative to the information that was requested last time and which the board received. He indicated he would allow questions from the audience after the board discussion, but reminded everybody that it was the 3<sup>rd</sup> meeting and it was not an opportunity to rehash everything that's been discussed the last 2 meetings. If it's something new that has not been brought up before we will be more than welcome to entertain it.

The first items open for discussion from the materials requested was a slope map. We requested any slopes greater than 30% be clearly marked on the map and be noted non-buildable per our subdivisions regulations. That note does not appear on the map, but there is a comment about slopes greater than 30% can have a daylight basement. Chairman Hobbs stated that that is still building on a slope greater than 30% and he was just not sure how that was going to work, but he would leave that up to discussion.

The second item he indicated would be discussed was a fully detailed Fire Risk Assessment that has some High Fire Risk Issues. He asked Mark Romey, with his expertise, for any items of concern.

**Mark Romey** brought the board's attention to page of 5 of the report.

**Chairman Hobbs** there are 2 areas in here where it talks about the probable fire behavior and the property's resistance to control. Wildfire ignition sources to the west has potential to move into the subdivision as the prevailing wind from the west increases coming across the reservoir making it a potential control problem. Here it says currently on the west half of the subject of the property the existing fuel condition such high or above burning conditions torching, spotting, this will result in high resistance to control.

He then read the recommendations from the Fire Risk Assessor (see document in file) and said they should be included as a condition since it is valid to reduce risk for future homeowners.

**Mr. Romey** stated that the high density of the homes and high fire risk is of concern.

**Chairman Hobbs** said the other major item requested was an updated map showing various well locations that was provided. They were able to get additional well sites marked on the map.

The last item requested was a geotechnical report. The developer hired Slopeside Engineering who did a rather extensive look at the soil types. Soil types in their evaluation was mainly from type B and Type C soil. Terms in the soil classification that OSHA uses it starts out stable rock which is basically bedrock goes down through bedrock stable rock type A type B type C. type c is the least stable soil in the soil classification system. Doesn't mean bad but least stable. Contains sand cobbles small rock silk sandy clay. They gave good recommendation on the slopes, liquid and plasticity indexes. Of the soil to see and maintain. Any structural fill material had to be compacted of a min of 95 % of the max dry density by the stmd6908 test a valid test for structure fill. Good recommendations on the cut slopes, permanent. Cut slopes -2 horizontal to 1 vertical. Structural fill slopes 2 horizontal to 1 vertical. Greater than 20 ft. on a fill should be benched.

**Mark Romey** asked if a transportation study was done.

There was some discussion about whether it was requested or not. No one remembered whether it was specifically requested, but all remembered discussing it.

**Chairman Hobbs** said the biggest issue still remaining is how many lots are going to be. What is really going to happen to that 30% side slope? That will dictate the number of lots, which dictates the transportation? In looking at slope map, we've discussed fuels. Any other comment or questions on fire risk assessment?

**Mark Romey** said he would have a tough time supporting all the housing units proposed in light of the fire risk: campground burning, Forest Service, historic fires.

Chairman Hobbs said the Risk Assessment raised the same points. That surrounding this property on 2 sides are potential south were campers are at the lake, starts and leave fires (high risk) create a hazard and problem for the area. But he thought that the main issue the density and if it is reduced from a structure standpoint then fire risk is going down accordingly but not going away when you live in the woods. Developer has discussed a fire system so that more than we usually get in rural areas.

**Kristin** noted that one access to the project site (ie Douglas Hill) is of high concern with not alternate route.

**Chairman Hobbs** noted the Fire Risk Assessment observed the need for an exit out of the South.

**Don Turman** said the road to the south is a County road that goes down to the south property goes right to the lake. The property is surrounded by water. There are 3 accesses out to the Douglas Hill. More roads leaving the area then just that –water is also there. He noted that the conditions will be met prior to final plat to reduce risk.

**Chairman Hobbs** said that one exit in the far northeast corner crosses forest service property, and asked if the developer had approval from the forest service to cross their property?

**Andy Belski** (developer representative) said there was a recommended condition to get the Forest Service permit for the third.

**Chairman Hobbs** noted that right now there was only 2 accesses. And he wanted to make sure everyone understood the Board was not approving it with just the 2 accesses.

**Larry Stewart (developer)** talked about the road being the “Old Highway” going to a cemetery and the different widths of the road.

**Chairman Hobbs** said from the board’s standpoint the main issue still need to address is this 30% slope issue and asked for the board’s comments/questions.

**Gary Mason** asked if it was this state requirement you can’t build on 30%?

**Kristin** read the provisions of the Lincoln county subdivision areas, that one of the first provision is identifying lands that are unsuitable for subdivision, which includes slopes greater than 30%.

**Chairman Hobbs** stated that that was the key - unsuitable, slopes greater than 30%. That doesn't mean you can't excavate it out and make a flat slope it just means if the slope is greater than 30% it's unsuitable for develop. That's what the regulation reads. There's a whole lot of that on the plat in terms of lots that exceed 30% that are unbuildable. The county requires those areas as no buildable zones. What would the variance be requisitioned to allow building anything on a slope greater that 30%?

**Josh Letcher** asked if they could request a variance?

**Kristin** said historically the county has required that the plat indicate no-build areas greater than 30%.

**Hobbs** asked what the variance would look like? Building on slopes greater than 30%

**Kenny Rayome** said that would send a bad precedence.

Josh said he builds houses for a living and nothing down there scares a builder to build greater than 30%. I'm torn between this rule 30% greater unbuildable but you drive around Montana and places being built. Who said it was unsuitable? Guys that don't have the experience. I have a problem with the rule. A variance would be good.

**Kenny** said he understood where Josh was coming from, but did not want to open that "can of worms". He said they would have to be very careful.

**Josh** said in Eureka that best building sites are the farm land they are trying to protect with these subdivision regulations. This land was useless for anything other than subdivision. It is not timber or ag land. He sees it as better places to put homes than on farmer's fields. Perhaps we could change the regulation.

**Chairman Hobbs** said he agreed with trying to protect farmland, but we have a regulation and the only way around it is a variance, but we can't say ignore the regulation.

**Gary Mason** asked if there something that could be requested to account for building sites.

**Larry Stewart** asked to address the Board .....came up with split-level ideas and driveways to meet the regulations based on Lisa's guidance. Didn't change the map last week because the planner changed. We thought we were giving you what you asked for and were following Lisa's guidelines. Don's been building roads for 35 years and I've been building homes for 35 years.

**Kristin** wanted to clarify for the record that the request from the Planning Board to have the developer put the areas greater than 30% slope on the map came before she was asked by the County to assist with their planning needs.

**Chairman Hobbs** said the lots were going to sell or not. The best ones always sell first.

**Kenny Rayome** said he thought it looked like 22 lots would be affected.

**Andy Belski** said there were about 8 lots that they had to "sculpt" in order to meet the regulations. He said the regulation did not address whether it was before or after ground has been modified. Doing this way allowed for 9% or less driveway slopes and building sites of 30x30. He said Lisa gave him the suggestion that that was acceptable. We didn't provide with a "no-build" map" because in our conversation with Lisa there are no lots that cannot be built if it can be sculpted.

**Chairman Hobbs** asked Mr. Belski if property is 70% slope than it can just be graded down to fit.

**Josh Letcher** said most of those lots were 80% on Dream Catcher Estates and they got away with it.

**Kristin Smith** said she did not think that project came in before the subdivision regulations had changed. She also reminded the Board about the process of subdivision review, which evaluates the impacts to the natural environment and the public health and safety. Considering how this subdivision will impact existing conditions as well as the future residents that live there.

**Kenny Rayome** asked if they really needed those 8 lots.

**Larry Stewart** said many, many counties do it differently. He said he spent thousands of hours trying to design and thinks it is a moving target. He suggested this was the last piece of developable property in Lincoln County. Have done "true justice" to planning; optimizing the situation.

**Don Truman** said the slopes were not continued – they were sharp pitches. "Fix" 3 or 4 with moving dirt and actually good for the environment.

**Kenny Rayome** said he had not had an opportunity to visit the site, but trust's Josh's comments.

**Chairman Hobbs** said a variance wasn't needed since it doesn't preclude sculpting. He thought the geotechnical report was good and the recommendations should be in the final plat.

**Kristin** asked if the Board was going to go through the conditions and finalize them with a recommendation.

**Hobbs** asked for a motion regarding the geotechnical report.

**Kenny MOVED to make the recommendations of the geotechnical report be a condition of final plat. Gary Mason SECONDED.**

**Chairman Hobbs** then identified the Fire Risk Assessment and read the recommendation.

**Don Truman** said the risk will be reduced because of all the roads creating fire breaks.

**Chairman Hobbs** continued reading the recommendation.

**Kristin Smith** said it is not unprecedented that the County has asked for secondary access in the past.

**Chairman Hobbs** asked who owned the property.

**Debbie Tribbel** stated that it was owned by the Roe family and could not be subdivided.

**Hobbs** asked for a motion on the Fire Risk Assessment

**Kenny Rayome made a MOTION to incorporate the Fire Risk Assessment recommendations into the conditions of approval. Ernie SECONDED. Motion PASSED.**

**MOTION to accept Geotechnical Report and requirements as a condition of final plat approval PASSED.**

**Cindy Ruth** asked if they had approved the preliminary plat because it sounded like they were approving final plat.

**Kristin Smith** explained that this was the preliminary plat process and the Planning Board was adding conditions and modifying any that need modified from the staff report and previous Board meetings. This is only preliminary approval and the developer has 3 years to comply with the conditions.

**Chairman Hobbs** began summarizing the conditions and suggested revising condition #9 to add the Fire Risk Assessment in certain areas; including the covenants.

**Mark Romey** asked to talk about condition 15 related to atvs and docks noting that part of it should be omitted because they can't control on public roads.

**Chairman Hobbs** noted that some of the conditions related to covenants should have been deleted after the last meeting and identified those.

There was some discussion about where to put the geotechnical report. The consensus was to replace 18 with the geotech recommendations and that it would not be tied to any specific engineer.

**Larry Stewart** noted as people develop the lot they will be required to have a geotech specific to their house design.

**Chairman Hobbs** said it makes sense, but since the County has no building permit then it was very difficult to enforce. He asked Kristin where to put the Fire Risk Assessment in the section of the covenants.

**Ernie** asked if the engineering should be in the covenants and as a regular condition.

**Chairman Hobbs** said yes, and wanted to make sure the FRA was in there. He then said the geotech should be included in the section on roads.

**Andy Belski** said there 4 different conditions that had to do with complying with the Lincoln County Road Standards.

**Chairman Hobbs** suggested making it #11. Access roads and driveways shall be constructed in accordance with the geotech recommendations.

**Kristin** asked about the common areas and that the sand mounds would be in certain ones. She could not locate one of them. **Belski** pointed to the smallest common area on the map.

**Chairman Hobbs** opened up public comment with the caveat that comments be focused on the new information being discussed.

**Audience (Katherine) member (INAUDIBLE)** said Old Hwy 37 was officially abandoned in 1958 so it has long not been a highway and there is no access out of the south portion of property.

**Kenny Rayome** asked if the water line for Rexford ever got addressed. **Hobbs** said yes.

**Cindy Ruth** is adjacent property owner with husband John. She was encouraged by Mr. Stewart mentioning Helena as an example to follow and suggested there be impact fees to pay for police, fire, etc. She had called dispatch because she was confused by comments received from Eureka police because the Eureka police have no jurisdiction in the area, only the county sheriff. She apologized for bringing up the next issue in public, but she has brought it up privately to the individual and nothing has happen. She read sections of state law that guide planning board members to recuse themselves or publicly acknowledge when they have a conflict of interest. She referenced Josh Letcher in some ownership documents with Stewart Homes and Truman Construction. There was some back and forth about what the details of ownership of business and property. She suggested that he was vested in the outcome of this project.

**Josh** stated that he did not have a financial interest in the subdivision nor did he have an interest in Koocanusa Escapes.

**Hobbs** stated as the chair, he would like to keep it clean and avoid any future issues and asked for Josh to recuse himself from the vote.

**Kenny** wanted clarification on the distance from Eureka because of jurisdiction of police issue.

**Cindy Ruth** stated that she had called dispatch and they confirmed that the Town of Eureka police had no jurisdiction.

**Cindy Cheney** has a problem with the Board having regulations and not following those regulations, particularly with the 30% slopes.

**Hobbs** stated that that section of the regulations should be reviewed.

**Lety Frey** said she is surrounded on 3 sides by this development, and asked if previous subdivisions have had to abide by this provision? (re: slopes)

**Hobbs** said there are subdivisions out there that have been approved without it.

**Kristin** noted that others have had to comply.

**Hobbs** said that the commissioners ultimately decide on rule changes and interpretation.

**Lety** also asked about whether there would be a large water tank on the common area and how big.

**Don and Larry** stated that there would be a series of tanks and would be partially buried. **Larry** said they've done much more during this preliminary process than most projects, but that there were trying to throw it out there where they thought they would land with the final design.

{multiple people talking ... INAUDIBLE}

**Lety** asked if it was okay that the proximity of the development's water supply could be so close to her existing well?

**Larry** assured her yes, that the DEQ would have to approve all water and wastewater design.

**Kristin** wanted to make sure that everyone knew that all comments pertaining to water and wastewater will be forwarded to DEQ for their consideration during the review. She asked if there had been any discussion on surfacing of the roads. RESPONSE: no.

**Andy** stated the roads were designed to meet the Lincoln County Subdivision Regulations.

{multiple people talking ... INAUDIBLE}

>>>> someone was asking about the sand mounds and leach field. She noted that the Corps owned the land "in front of her" and they would have to grant approval for anything that goes on their land.

**Kenny** stated that before anymore comments about water and wastewater come up he suggested folks get their comments to DEQ because this board doesn't have much to do with it.

**Gary Delorenzo** asked Kristin about the notification for the Planning Board meetings. He said a lot of people wanted to be there and asked if she had seen the petition in the paper of 500 signatures. {someone corrected it to 800}

**Kristin** said she had not seen a petition but would be happy to make it part of the record if someone forwarded it to her. She said the Planning Board meetings were not published in the paper, but in different electronic media.

**Gary** asked about the slope engineering and how the planning board was considering that in their review. He suggested it was by someone related to the developer.

**Andy Belski** said the owner, Josh Smith, just does geotechnical work. He used to own CNG Engineering and probably doesn't even know the Purdys.

**Gary** asked about the DEQ violation letter (re: Mariner's Haven) and whether they were going to cover that later?

**Hobbs** said it did not have anything to do with this subdivision.

**Gary** suggested the developer's history should be of concern to the Board. He said the road has not been resurfaced or paved in the 30 years that he's lived there.

**Hobbs** said that the Board doesn't have the authority to tell the County Road Department to maintain their roads.

**Gary** said he wasn't saying they did, he just thought the Board should consider it with the density of the site, because the county's road fund has continued to dwindle.

**Debbie Tribbel** is an adjacent property owner and wanted to thank Kristin for stepping in and to the Board for listening to concerns and a lot of consideration. [She passed out a letter for distribution]. She said as an adjacent property owner her due process has been violated with respect to publication of meetings, letters to property owners, and legal description. She emphasized the legal description that was on the original application and published in the paper referred to property that was in the middle of the lake. The application has T37N R27W it should be T36N R27W. She wondered how that could be missed with all the people reviewing it who have surveying and engineering degrees that it is sloppy. She noted 2 wells shown on the preliminary plat, but that the wells were dry and that they should be cannot be considered complete pursuant to Montana law (she referenced it is in the letter) and that there are still no logs recorded. She does not want to besmirch Larry's character, but was concerned about the gaping holes in the application. The density of homes proposed concerns her due to the traffic and recreation area. She and her husband built there home awhile ago, but the ground still shifts. [She passed around photos of a large slope cut from another area that did not adequately mitigate for run-off].

**Shawn Tribbel** had a question about the geotech report and aligning it with the preliminary plat approval. It sounded like the Board was putting it on the future homeowner to get a geotechnical report and do the homesite and driveway.

**Chairman Hobbs** clarified that the report had specific recommendations to the developer for building the roads and driveways, which he will have to follow, and that by adding them to the covenants they would be associated with the property in perpetuity so that future homeowners could make informed decisions about their homesite. As long as there is an area on the lot they can build it; otherwise the developer will sculpt an area.

**Andy Belski** said there were specific lots that need to be sculpted prior to final plat approval so those lots will have a designated homesite already.

**Lety** asked about the maps provide by the consultant from the last meeting and whether they could be used to compare.

**Kenny Rayome** said he finds it insulting that a person who is not a licensed professional engineer presents contrary information to an engineer and claims to be such.

**Larry Stewart** said she has been taken to the board before and has misrepresented herself.

{multiple people talking – INAUDIBLE}

**Chairman Hobbs** said when there is an engineer's stamp on something that is gospel because they have to be responsible.

**Lety** said last time it seemed like the board was very concerned about the slopes, but now it did not seem to be an issue of concern.

**Chairman Hobbs** said that he is also an engineer (not a professional engineer, but a master's in civil engineering) and is a licensed land surveyor in 2 different states. He tore through the Slopeside report and did not find error in what was recommended.

**Lety** asked if he had been out to the site.

**Chairman Hobbs** said many people had and most importantly the geotechnical engineer.

**Gary Delorenzo** said the annual Lincoln Electric Coop meeting was held this spring and that the rates were going up due to the part-time residents and it costs the co-op users to subsidize the non-resident population.

>>>>**Paul**>>>> {inaudible} someone said what we did not need was another trailer park, but is there something in this proposal that limits that type of development.

**Chairman Hobbs** answered that there is a time limit to the temporary RV use while building.

**Larry Stewart** said economically that this was not at the top of the list, but this level of development would not make sense to turn it into an RV Park.

{someone} said those {RV} are the type of lots are selling so of course it makes sense.

**Larry** said all the subdivisions from Pigeon Bridge south started as RV parks but have all turned into permanent homes.

{someone} said they are all bigger lots.

**Paul** said he doesn't want his property devalued as a neighbor. We have a huge problem in the county. This is exactly what is going to happen with this project. The covenants can change.

**Cindy Ruth** said the bottom line is that the developer has control over the covenants until 95% of lots sold. She said page 9 talked about the motorcycles, golf carts, atvs all allowed on community roads.

**Kristin Smith** said the materials that the developer submits cannot keep changing through the process. The Board has added conditions related to the covenants, and particularly with respect to RVs which cannot be changed without governing body review. She also mentioned that the only way for the county to address RVs as a land use – all those 800 people who signed the petition - let's have a discussion about zoning. It is the only way you will ever be able to control what happens next to you or on your property.

**Debbie Tribbel** asked for a water consultant when she hired Core Water Engineering. She was attacked the first meeting and did not represent herself as anything other than an environmental engineer. She was just looking through the application as another set of eyes to identify the holes in it and offer additional comment.

**Don** came expecting to hear pros and cons for approval or disapproval of a preliminary plat. It appears that we're talking about final plat. Just a process criticism.

**Josh Letcher** explained the process again, that there was still a lot the developers have to do before a final plat.

**Kristin** announced that the schedule and location for the commissioner's public hearing on the project.

{someone - INAUDIBLE} read some notes from a study about the tributaries of the Tobacco River and the water rights and availability for fisheries. [report was later received for the record]

{multiple people talking – INAUDIBLE} talked about the ground sloughing off into Lake Koochanusa. He used to have a Douglas Hill address, but that is gone now, into the lake.

**Kenny** said the project was sent to multiple agencies for their comments, but not everybody offers input.

**Chairman Hobbs** closed the public comment period and asked if someone was willing to put forward a motion to approve the preliminary plat with all of the recommendations that have been addressed with the updated information provided as well as all the additions, comments and amendments made tonight.

**Kenny made a MOTION that it be recommended for approval with all the conditions added tonight.**

**Cindy Ruth** interrupted the motion and wanted to know if they were supposed to take 10 days for a decision.

**Kristin** said this was the Board's 3<sup>rd</sup> meeting and it was noticed that the Board would be making a decision tonight.

**Cindy** said the process has been messed up and would continue to be.

**Gary Mason seconded the MOTION.**

**Josh is abstaining. 3 ayes; 1 nay. Mark Romey opposed based on the fire risk, density and access.**

**Chairman Hobbs** asked Kristin to note the vote and Romey's dissenting concerns.

### Planning Department Update

**Kristin** introduced Jake Mertes with Environmental Health who was taking over some of the Planning duties such as floodplain and lakeshore reviews and that things would be in transition for a while. The county was going to hire a consultant to take over some big projects, like the Growth Policy and subdivision regulations. She said she didn't see herself being involved too much past the summer but would help out as much as she could.

She said there would be a Lakeshore Permit review next month and that the consultant would likely be on board soon.

**Chairman Hobbs** asked her to update the Board member list.

Next Meeting – July 18<sup>th</sup> 5:30

Someone mentioned they had changed it to the 3<sup>rd</sup> Thursday but would be happy to change it back – at least 2 folks agreed.

**Kenny moved to change it back; Ernie seconded. All in favor.**

7:30 meeting adjourned.