

Becker County Planning Commission
July 20, 2004

Present: Members Don Skarie, Waldo Johnson, Ray Thorkildson, Larry Knutson, Jim Bruflodt, Julia Miller, Jeff Moritz, John McGovern, Harry Johnston, Ken Christianson; Commissioner Dave Seaberg; Zoning Administrator Patricia Johnson; Assistant County Attorney Gretchen Thilmony; and Zoning Staff Debi Moltzan.

Vice Chairman Bruflodt called the meeting to order at 7:00 p.m. Debi Moltzan recorded the minutes.

Moritz made a motion to approve the minutes from the June 15, 2004 meeting. McGovern second. All in favor. Motion carried minutes approved.

Bruflodt explained the procedure for the meeting and stated that the County Board of Commissioners would act upon the recommendations of the Planning Commission on Tuesday, July 27, 2004.

FIRST ORDER OF BUSINESS: Kevin Karel, Cormorant Inn and Suites.

P. Johnson explained that this application had been tabled at the last meeting for further information, which has been received. P. Johnson advised the Board that if they decided to approve the application, the State Department of Health terminology should be replaced with Zoning Ordinance definitions.

Carl Malmstrom, attorney for Karel, explained that the supplemental information has been submitted to the Zoning Office. Malmstrom also stated that the Department of Health has reviewed the facility. Malmstrom stated that if any deficiencies are found, Karel will address them and correct them.

No one spoke in favor of the application. Speaking in opposition to the application was Pat Kenney, attorney for Brian and Trish Maloney. Kenney compared the actions taken by Karel to an anarchy, an absence of government. Kenney stated that Karel has lied to and duped the Board by applying for one CUP, violating it; applying for another CUP, violating it; etc. Kenney stated that there have been several violations, for which no action has been taken. Kenney further stated that Maloney's do not fear competition; just ask that the zoning regulations be followed. Written correspondence was received in the form of a survey with 450 signatures in favor of the application, to upgrade from a small establishment to a medium establishment in order to increase its seating capacity. At this time testimony was closed.

Malmstrom responded to the allegations stating that there is substantial disagreement as to procedure and does not agree with the allegations and characterizations made by Kenney's clients.

Knutson stated that much of the testimony in opposition does not apply to the application before the Board. Moritz stated that he visited the facility on July 17th, at which time there were 55 chairs and two recliners and asked whether that was an issue. P. Johnson stated that that was an enforcement issue.

P. Johnson reminded the Board that the terminology on the application was Dept. of Health terminology, not zoning terminology. P. Johnson further stated that any violations would be an enforcement issue with the Zoning Office.

Motion: Knutson made a motion to approve a commercial use of Cormorant Inn and Suites since it was a commercial zone. Skarie second.

Christianson told Kenney that this is not an easy decision for the Board and it sounded like Kenney was zeroing in on the actions of the County Board but that this board must take action on the application before them. Kenney stated that there was a history of violations and past conduct, providing reasons for the Board to deny the application based on public policy.

Knutson stated that it was not this Board's role to send any type of a "message" to the County Board and that this Board must act on the merits of the application and for what is good for the community, not enforcement issues.

VOTE: A vote was taken on the above motion with everyone in favor except McGovern and Moritz. Majority in favor. Motion carried. Conditional use permit approved.

SECOND ORDER OF BUSINESS: Pace's Lodging. An application for approval of a preliminary plat consisting 33 lots for single family residences, 1 common lake access and 2 outlots and a change of zone from agricultural to residential for the property described as: E ½ of NE ¼ Ex 21.78 Ac in SE ¼ NE ¼ to State & 2.19 Ac in Lot 7; Section 31, TWP 138, Range 41; Lot 1 Ex 4.99 Ac to State, Section 32, TWP 138, Range 41; All of SW ¼ NW ¼ N of Mill Pond Ex 2.60 Ac, Section 32, TWP 138, Range 41; Lake View Township. PID Numbers 19.0640.001, 19.0594.000, 19.0639.000.

Chris Heyer, surveyor, explained the application to the Board. The EAW process began two years ago and this is the revised plan. There is some discrepancy on the OHW of Mill Pond, but a precedent has been set by allowing Gilbert Beach to be platted with general development standards and not natural environment standards. Heyer stated that they have asked for clarification as to the lake classification. The three outlots will be deeded to the Pelican River Watershed for special protection districts. Outlot D will be deeded to the adjoining property. Strict covenants will be placed on the property. This plat meets the requirements of the ordinance.

No one spoke in favor of the application. Speaking in opposition to the application were:

Hallie Larson, speaking for the lake association. Larson stated that this proposal is a result of the EAW petition, but still needs revisions to conform to the standards of a

natural environment lake. First the OHW of Mill Pond must be determined, just because one plat “slipped through the system” doesn’t mean that this practice should continue.

Gail Hahn, Lake View Township – the TWP is opposed because the plan is not consistent with the Zoning Ordinance; with the DNR’s OHW, lot sizes do not meet requirements and the plan looks more like a PUD than a residential plat. Most of the wetlands have been under water until the last 5 – 6 years.

Henry Van Offelen – Paces are after maximum density, progress has been made, but there is room for fine-tuning. The OHW of Mill Pond needs to be established.

Terra Guetter, Pelican River Watershed – The OHW clarified in the EAW was that along the lakeshore of Lake Melissa, not Mill Pond. Mill Pond’s OHW was never addressed and can only be set by the DNR. This information is needed before a final determination can be made. If Gilbert Beach was an oversight, it happened two years ago and was not of this magnitude.

Written correspondence was received from:

Bob Merritt, DNR – letter defining the estimated OHW of Mill Pond and showing the boundaries of this 1000 ft mark.

Hallie Larson, Lake Association – concern with the discrepancy on the OHW of Mill Pond.

COLA – plat does not meet criteria of the natural environment lake as defined by DNR

Terra Guetter, Pelican River Watershed – OHW issue should be resolved before productive discussion can be done on the plat.

Neal Blanchett, Larkin – Hoffman Attorneys – precedent has been set with Gilbert Beach,

EAW did not address the OHW of Mill Pond, MN law does not allow gatekeeper or pre-process to determine pocket denial, plat approval should continue.

Henry Van Offelen – concerns, which he stated in his prior testimony.

Signed statement with 100 signatures against the application.

Written correspondence was also received from Hallie Larson, which included background material and Lake Association’s memo.

At this time testimony was closed.

Discussion was held regarding the EAW, the different proposals, the current proposal as a result of the EAW, and the OHW.

Christianson asked Hahn if she was speaking for herself or for the Township. Hahn stated that she was speaking as a representative of the Township. Christianson questioned if the plat was from the DNR’s estimation. Heyer stated that the photography outlining the river was used. Christianson questioned what the elevation difference would be. Heyer felt it would be inches. Heyer stated that they have went back and forth

with the DNR on this issue because an elevation was not set, the DNR just worked off the vegetation and Mill Pond was a lake created by a dam.

Moritz felt that the DNR should be contacted to set the OHW. P. Johnson stated that the time had to be watched for the 60-day rule. Knutson questioned what part of the plat was not in compliance with the natural environment standards. P. Johnson stated that Lots 5, 6 & 7, Block 2 and Lots 1 – 5, Block 1 would not comply.

Skarie questioned why the OHW of Mill Pond was not addressed in the EAW. Guetter stated, that during this process, emphasis was placed on the wetlands along the shoreline of Lake Melissa. There was not enough emphasis placed on Mill Lake. Merritt's map was presented after the preliminary plat was submitted.

Moritz stated that the OHW is a critical component in this matter. If the OHW is different, the Board could be approving something that is noncompliant. The DNR should be contacted to set an official OHW. It's too bad that this was not brought up sooner, but it does need to be addressed now. It would be best to have the applicant table the issue to allow the study and have time to review that information. Knutson stated that he would like to see the OHW set. Johnston questioned how long this would take. P. Johnson stated that there is only one survey crew in the State that would do this and it could take a minimum of three months. Heyer stated that the project would be delayed one year.

Christianson questioned Thilmony as to what the options of the Board were. Thilmony stated that the 60-day rule clock is running so the Board would have to either approve or deny.

Neal Blanchett stated that a precedent has already been set on Gilbert Beach. There are three different water bodies in question with three different regulations. This should have been addressed in the EAW. Paces would like to move forward with the project, they have already been working on this for two years.

Mark Payne stated that Lots 5, 6 & 7, Block 2 have already been readjusted to meet the concerns of the EAW. Jason Kirwin stated that he worked on the EAW and that looking at aquatic vegetation and making a determination for the OHW is ok for lake, but not a lake with a river running through it.

Further discussion was held regarding clarification of the OHW, lots that would be affected by a change in the OHW, and boundaries. Johnston felt that the lots directly on Lake Melissa should be developed as general development standards and the rest as natural environment standards.

P. Johnson reminded the Board that they must act on the application that is before them. Either action would require findings.

Moritz stated that this process has been a long one for Paces, but it does go with the territory. The OHW is important information and needs to be determined by the appropriate people.

Motion: Christianson made a motion to approve a change of zone from agricultural to residential and approve the preliminary plat based on the fact that the development meets the criteria of the Ordinance with the stipulation that once the OHW has been established, the plat be amended to reflect the OHW. W. Johnson second.

Knutson questioned what that met. P. Johnson stated that this would give approval for Paces to go ahead with the road construction and reconfigure any necessary lots after the OHW determination.

VOTE: Everyone voted in favor of the motion except Miller, McGovern and Moritz. Majority in favor. Motion carried. Change of Zone and preliminary plat approved.

THIRD ORDER OF BUSINESS: Kip Moore. An application for a change of zone from agricultural to residential and approval of a certificate of survey to allow three tracts of land for the property described as: Pt of Govt Lot 6; Section 18, TWP 138, Range 42; Lake Eunice Township. PID Number 17.0197.001.

Moore explained the application to the Board. A similar proposal was presented in May, which he withdrew from the Hearing. The parcel would be divided into a one-acre tract in the North, a one-acre tract in the South and the balance in one tract in the middle. There has been concern about accessibility to the main lake, but the depth of the pond is 12 feet. This is a certificate of survey and not a plat.

Christianson questioned if Moore owned other land. Moore stated that everything he owns is on this survey. Moore further stated that there are already three docks on this pond, so an additional dock would not be something new.

Speaking in favor of the application was Scott Walz, surveyor. Walz stated that when the survey was done, the water was 2 ft below the OHW and the channel was still navigable.

Speaking in opposition to the application were:

Paula Stomstad – concerned about the wildlife and wants to protect the bay.

Written correspondence was received from:

David Barsness, DNR – stated a stipulation that subdivision at this site should not use the pond for mooring, but have access to Big Cormorant Lake.

Jay Carlson, Attorney for Cormorant Lakes Watershed – approves of the two lots on Big Cormorant, but does not approve of the one lot on the bay.

Randy & Cindy Beckett – opposed to the lot on the bay

At this time, testimony was closed.

Christianson asked Moritz to explain the Watershed's position on the proposal a little more in detail. Moritz further explained. Johnston stated that the bay has natural environment characteristics and lots on the bay should meet natural environment standards. Moritz stated that the tract on the bay should be treated as a nonriparian lot and should be given an easement access Big Cormorant Lake.

Further discussion was held regarding lake access, bay access, and size of lots. Moritz referred to Section 1 Subdivision 8 and stated that Tract C does not meet this test.

Motion: Moritz made a motion to deny the change of zone from agricultural to residential and to deny approval on the certificate of survey based on the fact that Tract C does not meet the criteria in Section 1, Subdivision 8 of the Becker County Subdivision Ordinance. Thorkildson second.

Further discussion was held regarding lot size, other lots on the bay and when they were platted, change in regulations and the application before them.

Vote: Everyone voted in favor of the motion except W. Johnson, Christianson and Seaberg. Majority in favor. Motion carried. Application denied.

FOURTH ORDER OF BUSINESS: Dick Lesage. An application for a change of zone from agricultural and preliminary plat consisting of four lots for the property described as: Pt W ½ SW ¼; Section 20, TWP 141, Range 38; Round Lake Township. PID Number 25.0074.000.

Lesage explained the application to the Board. The area to be platted is a remnant of a tract further to the south and is not connected. There would be two riparian lots and two nonriparian lots.

Johnston questioned how the owners would access the lake with the presence of the bluff. Lesage stated that steps could be constructed. Moritz questioned how far the public access was from this location. Lesage stated there was no public access; most people launch their boats at the resort.

Speaking in favor of the application was Scott Walz, surveyor. No one spoke against the application. Written correspondence was received Brad Grant, Soil & Water Conservation with concerns about any wetlands in the area. At this time, testimony was closed.

Further discussion was held regarding the lot size, access, location and access.

Motion: Johnston made a motion to approve the change of zone and preliminary plat based on the fact that it meets the criteria of the Zoning Ordinance and Subdivision Ordinance. Miller second.

Moritz made a comment that the next ordinance revision should address the buildable area of a lot. These lots have a triangular area, which comes to a point, which nothing can be built in that area although it counts as buildable area.

Vote: All in favor. Motion carried. Change of zone and preliminary plat approved.

FIFTH ORDER OF BUSINESS: Harold Trimmer. Requests a change of zone from agricultural to residential and approval of a certificate of survey for two tracts of land for the property described as: Pt of Govt Lot 5; section 7, TWP 139, Range 42; Audubon Township. PID Number 02.0040.001.

Trimmer explained the application to the Board. Trimmer would like to build a new home and the lot would be split into two parcels. Both parcels meet the criteria of a natural environment lake.

Jean Roen questioned if the Audubon Township has approved this plan and is concerned about the lake. Brufloft stated that the Audubon Township has been notified but does not have zoning regulations for approval.

McGovern questioned the size of the lots. Jonathon Anderson, surveyor, stated that the lots meet the criteria for lot area, buildable area and septic requirements.

No one spoke in favor of the application. No one spoke against the application. There was no written correspondence either for or against the application. At this time, testimony was closed.

Further discussion was held regarding the lot size, buildable area and septic requirements. Skarie questioned what the buildable area of a lot must be. P. Johnson stated that each lot must have 2,000 sq ft of buildable area. Moritz stated that the buildable area on these lots would accommodate a house 30 ft by 100 ft in sizes.

Motion: Christianson made a motion to approve the change of zone from agricultural to residential and approval of a certificate of survey for two tracts of land based on the fact that the request meets the criteria of the Zoning Ordinance and Subdivision Ordinance. Seaberg second. All in favor. Motion carried. Change of zone and certificate of survey approved.

SIXTH ORDER OF BUSINESS: Winton Johnson. This application was removed from the agenda due to the receipt of an EAW Citizen's Petition.

SEVENTH ORDER OF BUSINESS: Warren Eide. Request an application for an after the fact conditional use permit to allow a retaining wall to remain on the property described as: Lot 4, Holiday Beach; Section 22, TWP 138, Range 43; Cormorant Township. PID Number 06.0805.000.

Eide explained the application to the Board. A retaining wall was constructed to keep a tree from falling into the lake. They did not know they needed a permit. They were contacted that the wall was in violation and contacted a landscape architect, who submitted a letter to the Zoning Office. They thought the issue had been resolved until they applied for a site permit to replace their storage shed. They have been assured that the wall has been constructed in a manner that it will stay in place. The bank was unsafe before it was stabilized.

Brufloft questioned when the work was done. Eide stated that the work was done two years ago. Eide further stated that the Cormorant Township Board did not have a problem with the wall. Christianson questioned who constructed the wall. Eide stated he constructed most of the wall but a landscape architect approved it.

Speaking in favor of the application was Jody Beaudine, Cormorant Lakes Watershed stating they did not have an issue with the wall but had an issue with the material that the wall was constructed of. No one spoke against the application. Written correspondence was received from Joe Lightowler, President of Big Cormorant Lake Association, concerned about the railroad ties in the water. At this time, testimony was closed.

Further discussion was held. McGovern questioned if there was any comment from the DNR. P. Johnson stated that there were no comments from the DNR. Moritz stated that Bob Merritt was on vacation because the Watershed tried to contact the DNR for a list a suggest materials for retaining walls. Johnston felt that the application should be acted upon and if the DNR wants to furnish more information and materials list, that information would be applied to future applications. W. Johnson stated that the Board did not have any information that stated they could not approve a railroad tie wall.

Motion: W. Johnson made a motion to approve a conditional use permit to allow an after the fact retaining wall based on the fact that it does meet the criteria of Section 12 and that there is no documentation that prohibits railroad tie walls. Seaberg second. All in favor except Moritz and McGovern. Majority in favor. Motion carried. Conditional use permit for an after the fact retaining wall approved.

EIGHTH ORDER OF BUSINESS: Eugene Doyle. Request a conditional use permit to repair an existing retaining wall for the property described as: Pt of Govt Lot 3; Section 26, TWP 138, Range 42; Lake Eunice Township. PID Number 17.0712.000.

Eugene Hansen explained the application to the Board. The existing failing railroad tie wall will be removed and replaced with landscape block. The wall would be approximately 2 ½ feet high.

W. Johnson questioned if the wall would be in the water. Hansen stated that the existing riprap would be in front of the wall and that the rock would protect the wall from wave action. Moritz questioned the retention area. Hansen stated that the retention area would be 4 to 6 inches deep and slope from the block toward the house. Brufloft questioned

why the entire area will not be rip rapped. Hansen stated that the landowner wanted to replace the existing wall with another wall.

No one spoke in favor of the application. No one spoke against the application. There was no written correspondence either for or against the application. At this time, testimony was closed.

Further discussion was held regarding the condition of the existing wall, the riprap and erosion of the bank.

Motion: Johnston made a motion to approve a conditional use permit to allow the replacement of the existing retaining wall based on the fact that the application meets the criteria of the Ordinance and that the new wall will replace an existing deteriorating wall. McGovern second. All in favor. Motion carried. Conditional use permit for a retaining wall approved.

NINTH ORDER OF BUSINESS: Seaberg/Seeley (Taylor Investments) An application for a change of zone from agricultural to residential and preliminary plat consisting of 13 lots for the property described as: Pt of Govt Lots 1 & 2; Section 23, TWP 139, Range 39; Height of Land Township. PID Number 15.0217.000.

Terry Freeman, surveyor, explained the application to the Board. This proposal is a revision from the first submittal, when there was a concern about the wetlands along the shoreline. An estimated OHW was determined to be at the edge of the wetlands, which may be a high estimation. Outlot B would be attached to Lot 11. The proposal meets the requirements of the Ordinance.

No one spoke in favor of the application. Speaking in opposition to the application was: Bruce Speer - concerned with traffic issues and wetland issues

Bill Purdy, COLA Representative – Lots 8 – 11 should be treated as nonriparian lots and an access lot should be set aside for these lots with a minimum of 150 feet of frontage. This lake may be recreational development, but the characteristics of this bay are natural environment. Secchi disc readings have increased due to the efforts of the lake association and residents.

Dennis Hilgers – lake currently has two campgrounds; this proposal looks like a resort, not like the development to the south, conservation easement has not been granted to the DNR; there needs to be a parking area for the lake accesses; and has questions as to what happens to the easement across this land for the owners of Sunset Beach

Jerry Mott – concerned that he would be forced to give an easement to Outlot B and suggested that Outlot B be deeded over to the DNR.

Steve Hilgers – concerned about the access to Sunset Beach

Purdy – Taylor is not new to development and should have addressed these problems before submittal.

Written correspondence was received from:

Soil & Water Conservation with concerns about the wetlands

DNR stating that the agreement for two docks was based on a conservation easement for the wetlands, which has not been received yet.

Steve Blaske concerned with the negative impact the development would have on the lake.

At this time testimony was closed.

Freeman stated that he did not remember that there was a contingency placed on the second docking system. Dave Dingman stated that a conservation easement could be done for the wetlands. Freeman stated that a parking area was not needed but everyone could walk to the lake easement. The road plan goes to the edge of their property. Outlot B cannot be excluded from the place. If it were, an easement could be forced. The DNR did not request one lot for a controlled access, just a shared dock.

Christianson stated that applications are thrown at this group with not much time to act on them. Christianson asked why Taylor did not fashion this plat after the one on Little Floyd Lake.

P. Johnson stated that the 60-day rule does apply and action must be taken on the application.

Johnston felt that this was very similar to the plat on Little White Earth Lake, in which one lot was set aside for an access lot. Johnston further stated that no one will walk 500 feet with fishing equipment to get to his/her boat.

Dingman stated that revisions have already been made on the plat. The revisions addressed concerns of the DNR. Taylor has an obligation to the current property owners and is in no position to ask to table the application.

Motion: Christianson made a motion to deny the change of zone from agricultural to residential and deny the preliminary plat for 13 lots based on the fact that there needs to be more information on the contours of the property; concerns for the lack of parking; concerns for the number of docks; and the lack of conservation easements. Johnston second. All in favor except Seaberg, who abstained from voting.

TENTH ORDER OF BUSINESS: Richard Swenson. This application has been removed from the agenda due to the receipt of an EAW Citizen's Petition.

ELEVENTH ORDER OF BUSINESS: Donald Askelson. Request an application for a change of zone from agricultural to residential for the property described as: Pt NE ¼ NW ¼; Section 10, TWP 139, Range 43; Lake Park Township. PID Number 18.0062.000.

Jim Kaiser explained the application to the Board. This subdivision is near the City Limits of Lake Park, approximately 200 yards from the Cennex Station. The City of Lake Park acted on the preliminary plat, giving preliminary approval. There are some minor details to work out with the road and the Township.

Speaking in favor of the application was Scott Grande, TWP Supervisor, he was in agreement with Kaiser and stated that there was just some minor details to work out with the road.

No one spoke against the application. There was no written correspondence either for or against the application. At this time, testimony was closed.

Further discussion was held regarding the two mile territorial limits of Lake Park, the location of the plat and the surrounding community.

Motion: McGovern made a motion to change the zone from agricultural to residential based on the fact that it is compatible with the area, primarily the City of Lake Park. Thorkildson second. All in favor. Motion carried. Change of zone approved.

TWELVTH ORDER OF BUSINESS: Ernest Saylor. Request a change of zone from agricultural to residential and approval of a preliminary plat consisting of 19 lots for the property described as: Pt of Govt Lots 3, 4, 8 & 9; Section 27, TWP 139, Range 43; Lake Park Township. PID Number 18.0176.000.

Scott Walz, surveyor, explained the application to the Board. This is a revision of an earlier plat that was denied and an EAW has already been done on this property. This lake is a recreational development lake that has natural environmental characteristics. The number of lots has been reduced from 25 to 19 and lake frontage has increased to meet lake frontage of a lot on a natural environment lake. In order to utilize the road in the current location, lot area does not meet that of a natural environment lake. A soil analysis has been done to make sure the soil can accommodate septic systems.

No one spoke in favor of the application. Speaking in opposition were:

Scott Grande, TWP Supervisor stating he is not against the application just concerned with the road because the road was built without prior permission and that the “old” road leading into the subdivision is not adequate for current traffic.

Dale Binde clarified that approval was given that the township would take over the road, but has not taken it over yet; but that did not give permission to begin construction.

Matt Bjerke concerned the lots are too small to meet the natural environment qualities of the area and that the wildlife should be protected.

Written correspondence was received from Soil & Water Conservation with concerns about the wetlands; and David Aune in opposition to the application.

At this time, testimony was closed.

Further discussion was held regarding the lot sizes, characteristics of the neighborhood, road and revisions on the plat. Knutson questioned what would change if the lot size was increased to 80,000 sq ft. Walz stated that either the road would have to be moved or they would loose one or two lots. Brufloft stated that if the lot size was increased, it still would not decrease density.

Motion: Seaberg made a motion to approve the change of zone from agricultural to residential and approve a preliminary plat consisting of a maximum of nineteen (19) lots based on the fact that the application meets the criteria of the Zoning Ordinance and Subdivision Ordinance with the stipulation that each lot must have a minimum of 80,000 sq ft of lot area. Skarie second. All in favor except Moritz, who abstained from voting.

THIRTEENTH ORDER OF BUSINESS: Final Plat of Touch of Sweden, Dean Johnson Developer.

P. Johnson explained that the preliminary plat for four lots and the change of zone from agricultural to residential was approved in April 2004. The plat and paperwork are in order.

Motion: Skarie made a motion to approve the final plat as presented based on the fact that it does meet the criteria of the Zoning Ordinance and Subdivision Ordinance. W. Johnson second. All in favor. Motion carried. Plat approved.

FOURTEENTH ORDER OF BUSINESS: Informational Meeting.

The tentative date for the informational meeting is scheduled for Thursday, August 12, 2004 at 8:30 am at the Planning & Zoning Office.

Since there was no further business to come before the Board, Thorkildson made a motion to adjourn the meeting. Miller second. All in favor. Meeting adjourned.

Jim Bruflo, Vice Chairman

ATTEST

Jeff Moritz, Secretary

Patricia Johnson, Administrator