

**Board of Lake County Commissioners/Kootenai Lodge Mitigation  
May 3, 2005**

Commissioners Present: Chuck Whitson, Paddy Trusler, Mike Hutchin

Staff Present: Sean Conrad, Sue Shannon, Pam Reznak

Developers Present: Jay Billmayer, Bob Milhous, Charlie Seaman, Jerry Peasack, Bill Astle, Dave DeGrandpre

Mike Hutchin began the meeting by reading from an article in the Hungry Horse news that the Kootenai Lodge was already approved and jokingly stated that this meeting is unnecessary. He then put the joking aside, warned people that just because they read it in the newspaper doesn't make it true. He introduced the Commissioners and the Staff and advised the attendees that public comment would be held to a total of 30 minutes.

Several members of the audience voiced their opposition to the public comment time limit. Others asked was the County Attorney in attendance [he was not]. Another asked when the Commissioners expected to have a decision. Mike Hutchin responded that they would make a decision today, but have until Thursday by law.

**PUBLIC COMMENT**

Clint Fisher began the public comment by saying that the Commissioners should not proceed with review because the Joint Application was not signed by the owner of the property, there is no wastewater site, and the density is not commensurate with the surrounding community. He further advised ½ the currently proposed density.

Jack Morton stated that economic viability is not a factor, that the County does not have regulations for the density bonus and the number of units should be reduced to 13 tops. He indicated that this process is absurd and the Commissioners have no option but to deny.

John Snyder addressed dock safety and stated that Milhous distributing maps was not enough and that the maps don't mitigate safety.

Denise Lang read from the Daily InterLake opinion page. She indicated that the developer's rights should take second place to the public's rights. She suggests that this is not the "highest & best use" of the property and that the review process should not proceed because Milhous is not the owner. Height of buildings over 30' will obstruct views and this ugly development obliterates open space. Lake and river users will see ugly. She pleaded for the Commissioners to deny the project so as not to destroy this area.

Bradley Worth protested the 30-minute public comment time limit and the economic return to the developer at the expense to the neighbors. He discussed the market value versus the negative influence on the value of his land.

John Pierson, the President of the Swan Crest Homeowners Association, read a blurb from the covenants of the Ridge and urged no action until the sewage issue is addressed.

Sue Lavery wants reasonable development with 2 1/2 acre density, 100' setbacks from Johnson Creek and plat verbiage disallowing funneling.

Denny Kellogg quoted that the core value of human beings is that a person "only does what their conscience allows."

Peter Leander thanked the Commissioners, Planners, and Planning Board for all their hard work. He feels like this mitigation is a slap in the face. He agrees with Sue Lavery, that it's not a case of 'not in my backyard'. He wants to protect public and his family's health and safety. He expressed concern that the Commissioners should not approve this development as a result of the fear of retribution through lawsuit from the Milhous Group. The Rolfings own the land. The subdivision regulations require a sewage disposal plan. There is no basis for a density bonus and it is an illegal application. He suggested that the Smith/Robertson law firm letter regarding this proposal says federal law is being violated. He feels that the founders of the Lake County Commission didn't want this and concluded saying that citizens who have no voice aren't citizens.

Jack Morton emphatically insists that the property is a federally protected bear corridor and has been overlooked in this review process. He addressed the concerns voiced by the Confederated Salish & Kootenai Tribes concerning the effect on drainage not only on Johnson Creek but on every other drainage.

Jeff [last name unknown] feels that the proposed density is not in accordance with the growth policy.

Jack Morton states that there are no standards to calculate density, but if you were to use Bug Creek density there would only be 13 units. He feels that this is the most historically & environmentally sensitive area in the county.

Public commentator says that he has great concern with the density map and stated that it can't be used until it's adopted. Mike Hutchin agreed.

Public commentator said that without a growth policy the Commissioners can't make a decision. Mike Hutchin said there is a growth policy.

Public commentator pouted about the special table for Milhous and requested a rebuttal from the opposition to this project.

Public commentator questioned how the Commissioners could address this with the overwhelming public opposition. Mike Hutchin said they use criteria from the subdivision regulations.

Peter Leander indicated that Milhous used the pick & choose method to arrive at their density numbers and we need to use the highest per unit density numbers.

Jack [unknown last name] said that the planning staff addressed density and compatibility is why we're here. Mike Hutchin responded that density is not part of the review criteria.

Public commentator again requested rebuttal time. Hutchin denied the request.

Dave DeGrandpre began the mitigation session and invited questions from the Commissioners.

#### LANDSCAPE BUFFER

Mike Hutchin addressed the landscape buffer on the north property line. Paddy Trusler asked Melinda – an adjoining neighbor - what her wishes might be. She wants a fence to keep the public visiting the barn, construction workers & guests off her property. Trusler said that a rail fence wouldn't be much good at keeping people out. DeGrandpre suggested that under Montana Law fencing is the responsibility of both property owners and that the barn is not public. Trusler asked if Milhous would fence prior to final plat approval and DeGrandpre indicated that was acceptable. Trusler reiterated that fencing would be for the whole north boundary of the property. Other neighbors for higher & denser blockage recommended more shrubs. Trusler agreed to a three-rail cedar fence, a 3' berm and denser evergreen foliage than was proposed in the buffer plan.

#### SHERIFF

Mike Hutchin asked about Sheriff mitigation.

Trusler asked the approximate time for build out. DeGrandpre said 5 years. No further discussion.

#### PARKLAND

Trusler doesn't agree with Milhous' interpretation on parkland. Chuck Whitson agreed with Trusler. Trusler suggested the alternative of payment in lieu. DeGrandpre asked if Trusler meant 11% of the property value? Discussion of set aside and common area evolved. Bill Astle, attorney for the Milhous Group, clarified that under the condominium act lots are eliminated and the rest of the area is open space, common area, parkland for perpetuity. Trusler disagreed and wants money in lieu for public access. Hutchin disagrees with Trusler and cited examples of Jette Lake, Kootenai Woods & other subdivisions in which the parklands are in the homeowner association's hands. Hutchin further asked for a contribution to help Lake County provide Swan Lake access to the public.

#### SUNBURST DR SETBACK

Mike Hutchin moved on mitigation point #4; the setback on Sunburst Dr. Trusler indicated that he didn't see any mitigation in the Milhous response, but rather justification for what is already proposed. DeGrandpre requested clarification as to whether the issue was view - looking at the houses? Trusler said it was to shield the remainder of the development from public view. Trusler wants further setback to facilitate the vegetative buffer and still be fire-wise.

#### DOCK & WATER SAFETY

Mike Hutchin asked John what alternative he could suggest for river safety. John responded make a "no wake" zone and eliminate jet skis. FWP already made a no wake zone, but hasn't posed it yet. Hutchin suggested that another commission addresses water safety concerns. John

further recommended non-motorized dock slips and covenants. Kay said no wake on the river and no jet skis allowed.

Clint Fisher reiterated that less density, fewer docks and no funneling would make the lake safer. DeGrandpre agreed to remove funneling options from the covenants.

Bill Astle says the covenants will reflect that sentiment and the Lake County Commissioners will have final approval on any changes in the covenants.

Chuck Whitson read the response that the Milhous Group provided concerning this mitigation point. Trusler questioned whether the developer intends to allow jet skis at the boat docks. Jerry Peasack – a Milhous Group investor – said they would adhere to the same regulatory restrictions that apply to all on the lake. He said it's a matter of equity. Jack said that peer pressure to abandon jet skis has worked on everyone but Milhous and did not feel it would work on monthly renters.

Bob Slate says this is illegal – that the no wake zone is regularly violated. There was general discussion concerning the inability to patrol the lake. A public comment noted that no boat ramp is shown and DeGrandpre replied that there would be a boat ramp and that it will comply with all Lakeshore regulations and that it is a matter of fairness.

Public commentator said he had five proposals for restrictions on power boats:

They need to be registered to the property owners

No guests would be allowed boats

No powerboat rentals by anyone- owners, renters, concessionaires

No joint ownership boats

Boating restricted to daylight hours

He further suggested that there should be no boat maintenance facilities, no fueling station, and no stacking of watercraft

## DENSITY

Trusler asked the developer whether the density they chose was based on land use or economic viability. Jerry Peasack responded that is based on many things and they did reduce the number of units in response to public comments.

## OFFSITE WASTEWATER TREATMENT

Trusler asked what happens if the developer cannot find an alternative site. Seaman answered that the developer bears the burden for that and advises that septic tanks on Swan Lake is not prudent.

Peter Leander voiced opposition to proceeding without a specific waste site.

## STORMWATER MANAGEMENT

Trusler is concerned with the alluvial plain and artificial nutrients from fertilization and asked the developer how they would fertilize and how to enforce it. Jay Billmeyer focused on

treatment & subsurface discharge and explained that the issue is nutrients migrating into water bodies. Grounds will be professionally maintained and therefore better managed.

Trusler asked about boat/RV storage on the property and inquired how the developer expected to deal with hydrocarbon discharge through the gas & oil leaks and spills. Peter Leander referred to an Attorney General's opinion and quoted McGrath. Leander expects storm water to be dealt with prior to final plat.

#### OFFSITE WASTEWATER

Trusler asked if Milhous would be willing to hire a biologist to monitor water impacts. DeGrandpre said they would be happy to participate with their neighbors in such an endeavor.

#### PUBLIC SEWER DISTRICT

Peter Leander argued that the sewer district is not public.

#### SETBACKS FROM JOHNSON CREEK

Trusler says the mitigation response appears to be without scientific basis. DeGrandpre says that water quality is the result of many measures. Trusler is concerned about the grizzly corridor. DeGrandpre says no one can prove that this is a grizzly corridor and admits that there are three corridors about 10 miles to the south. Trusler renamed it a wildlife corridor. Seaman acknowledged that the biologist's response was based on a 100' standard for identifying a corridor along any waterway. Seaman suggested that they weren't in deviation because it's not a corridor – most of the land has been cleared for 50 years. Peter Leander suggested an evolution of better planning by adding to the corridor with re-vegetation of open spaces.

#### FRACTIONALIZATION

The developer says they have committed to removing fractionalizing and funneling from the covenant verbiage. Peter Leander discussed the option of a deed restriction being stronger than a covenant. Bill Astle suggested that as covenants, the County Commissioners have final approval of changes.

Paddy Trusler suggested that the best way to handle this is to create a zoning district specific for this property. Astle asked if that were so even if there's a matter of enforcement. Clint Fisher said as far as enforceability, zoning is better.

Hutchin called for a short break for developer panel to discuss the points of mitigation.

Hutchin reconvened the meeting and thanked the public for two good meetings.

#### PARKLAND

Dave DeGrandpre began with the parkland response on p. 3. saying that the Lake County Subdivision Regulations read that the local governing body shall waive the parkland requirement if the preliminary plat shows land set aside for the persons in the subdivision. Trusler withdrew the need for mitigation.

#### LANDSCAPE BUFFER

Dave DeGrandpre agreed to buffer the north property line with 3-rail fence and more vegetation

#### SHERIFF

Commissioners felt no problem with mitigation already proposed.

#### SUNBURST SETBACK

Commissioners and Developer discussed 30' setback with a 3' berm and fire mitigation. The developer worked closely with the fire department to decrease fire danger throughout the project including a second road and fire breaks.

#### DOCKS & WATER SAFETY

DeGrandpre requested equity and voiced the developer's wishes to join others in the county for alterations to the rules currently in place. The lake is difficult to police, but the developer will do it if the neighbors do. They just want equity. Trusler asked for clarification and DeGrandpre said the developer has agreed to a voluntary restriction of 24 boat slips and that if the public thinks the waterway regulations are too lenient they need to be changed. DeGrandpre feels that this concern is already mitigated.

DENSITY – as is. Jerry Peasack says they don't have any new response to density. They feel strongly that density relates to impacts and they have addressed those impacts. Bill Astle defers to the professional planners as experts on unzoned property. Astle suggests a legal right to this density on an unzoned property. Hutchin left density as is.

WASTEWATER - no comment

STORMWATER – no comment

OFFSITE WATER TREATMENT – no comment

#### JOHNSON CREEK BUFFER

Charlie Seaman reported that the largest tree is 70' away from the center of the creek and that if the Commissioners approve an 80' buffer the developer will revegetate it to recapture the real buffer.

FRACTIONALIZATION – no comment

Paddy Trusler approached the possibility of a zoning district as a condition of approval. Seaman said they would entertain that proposition after approval. Astle is not opposed to zoning. Trusler suggested a minimum of the conditional approval items were to be used in the zoning. Seaman conceded that zoning might be okay, Astle agreed.

Dave DeGrandpre readdressed height restrictions.

Peter Leander asked that once zoning is approved would later amendments be publicly reviewed? Trusler explained the zoning process, the public's ability to comment on the zoning,

and the Commissioner's final approval. Leander thought it would be cleaner to make that a part of the conditions of approval, but that the development should not be approved by any means.

Mike Hutchin closed developer comment and opened discussion between the Commissioners.

Hutchin asked if the north boundary satisfied their needs. Trusler & Whitson agreed.

Hutchin asked if the Sheriff was taken care of. Trusler said it's a short-term fix to a long-term problem. He proposed a storage building for search & rescue or channeling the \$50,000 to water rescue and related equipment. Whitson disagreed with both the nominal amount and the search & rescue proposition. Trusler suggested housing for search & rescue in the form of land and building. Hutchin compromised with no money but rather land for the fire department and search and rescue without a building. Whitson was okay with that & Trusler agreed.

Hutchin asked if parkland was okay. Trusler & Whitson agreed.

Hutchin asked if the setback on Sunburst Drive was okay. Trusler said they started at 20' then offered 30', but he would like 50'. Whitson & Hutchin said okay.

Hutchin addressed river safety. Trusler asked for five minutes for a speaker. Whitson & Hutchin vetoed that request. Trusler asked DeGrandpre if he agreed with reasonable compliance with public health & safety. DeGrandpre responded that when the docks are considered – when they apply for a permit – the window for public comment would be open. Trusler pointed out that the shoreline regulations are more attuned to Flathead Lake than Swan Lake and wanted the developer to realize that strict interpretation of regulations was not their only concern. DeGrandpre agreed that they were as concerned with public health & safety as anyone in the room. Peasack wanted clarification on what the Commissioners were asking and Hutchin responded density. Trusler conceded that the Commissioners understand that they can't look at density in unzoned areas but rather at mitigation issues and therefore may not go against the density that the developer proposes. Whitson said the density should be what is in the neighborhood. Trusler wished he had the appropriate tools to govern density.

Hutchin asked if wastewater was okay. Whitson & Trusler agreed.

Hutchin asked about stormwater. Whitson & Trusler agreed, but Trusler asked about on site boat and RV parking. Billmayer said they would put catch basins on the impervious surfaces. Seaman agreed that they would covenant that boats & RVs would be kept only on paved areas.

Hutchin asked if stormwater was okay. Trusler informed the developer that they would need to change the name from Kootenai County and Billmayer conceded. Whitson & Trusler were okay with the item.

Hutchin asked if Johnson Creek setbacks were okay. Trusler recommended 100' with re-vegetation. Hutchin modified the setback to recapture the same footage of open space as would a 100' setback.

Hutchin asked if the Commissioners were okay with the funneling mitigation item. Whitson & Trusler agreed that they were.

**Paddy Trusler moved to suspend the Commissioner rules to complete this project today. Chuck Whitson seconded. Vote Unanimous.**

Hutchin asked if Whitson, Trusler, and the developers if they understood conditional approval #1. They all responded yes.

Mike Hutchin addressed each condition of approval & whether Whitson & Trusler were okay with it:

	Whitson	Trusler	
#1	okay	okay	
#2	okay	okay	
#3	okay	okay	
#4	okay	okay	7-23-3 is Unit Ownership act.
#5	okay	okay	with impervious parking for boats and RVs
#6	okay	okay	Discussion of 7-13-2201 being the public water & sewer facilities act, Sue Shannon confirmed it addresses the creation of a water/sewer district. Hutchin suggested adding that the developer must obtain Ridge covenants or go through further public review.
#7	okay	okay	
#8	okay	okay	
#9	okay	okay	
#10	okay	okay	
#11	okay	okay	
#12	okay	okay	Trusler wants to add a fire department maintenance agreement. Hutchin wants to respell to 2 ½" plumbed, not plumed.
#13	okay	okay	Add verbiage that in the event this site cannot be utilized, developer will propose an alternative and go through further review. DeGrandpre asked for clarification – full review or for those specific issues & related issues? Hutchin said to deal with specific & related issues. Conrad asked if the Commissioners would like to add verbiage on #2 for a combination sheriff's search & rescue and fire department. Condition modified that the developer will provide a space for a search & rescue building either adjacent to or in another location.
#14	okay	okay	Modify by taking off first sentence
#15	okay	okay	
#16	okay	okay	subject to other agencies
#17	okay	okay	
#18	okay	okay	
#19	okay	okay	Trusler questioned 100 year flood plain. Sean Conrad said that would be addressed in condition #29. Billmayer says it's an approximate FEMA boundary. Trusler says expand the language such that the 100 year flood plain has to be delineated on the final plat.

#20 Add that developer add revegetation to recapture open space. Conrad added verbiage within the 80' setback. Some discussion ensued, Seaman re-explained the expansion of the riparian zone and agreed with Conrad's 80'.

okay okay Hutchin also agreed

#21 okay okay modified to 50' set-back.

#22 okay okay Trusler questioned what would be an appropriate condition to modify for the zoning district. Hutchin said they'd add a new one. Seaman wants covenants also. Trusler asked Astle to supplement with appropriate verbiage and he agreed.

#23 okay okay

#24 okay okay

#25 okay okay Trusler asked to clarify which roadways. Sue Shannon replied only the ones within the subdivision.

#26 okay okay

#27 okay okay Hutchin agreed

Astle requested adding zoning as 27B shall be filed on plat for zoning.

#28 okay okay

#29 okay okay

#30 okay Trusler said or Swan River okay Hutchin agreed.

#31 okay okay

#32 okay okay Trusler asked what's that & Shannon replied it has to do with license requirements for public accommodations.

#33 okay okay

#34 30' okay 30' okay

#35 Floodplain zoning condition Johnson Creek & the river to be noted on final plat  
okay okay

#36 Sean proposed the fence, berm & additional vegetation to the north boundary of the property prior to final plat.

okay okay Hutchin agreed

#37 Implement zoning district prior to final plat.

okay okay Hutchin agreed

Jerry Peasack readdressed the height of the buildings. Mike Hutchin asked the other Commissioners if sprinkling is an option. Both said no. DeGrandpre asked why the height restriction and Trusler answered it's a matter of equity – that's what the neighbors have.

**Trusler moved to adopt the proposal with 57 units per the amended conditions of approval. Sean Conrad asked if he would like to include the variance requests for the bridge and entrance gate. Trusler amended his motion to include granting the two variances.**

**Dave DeGrandpre asked if they were also adopting the finding of facts. Trusler answered yes.**

**Chuck Whitson seconded.**

**Vote unanimous.**