

CASCADE COUNTY
PLANNING BOARD

12/20/2022

9:00 AM

Hybrid Online/Zoom Online Video Meeting

Board Members: Dexter Busby, Richard Liebert, Elliot Merja, Bruce Moore, Sara Murphy, Beth Schoenen and Rob Skawinski.

NOTICE: PURSUANT TO MCA 2-3-212(1), THE OFFICIAL RECORD OF THE MINUTES OF THE MEETING IS IN AUDIO FORM, LOCATED AT CASCADECOUNTYMT.GOV AND THE PLANNING OFFICE. THIS IS A WRITTEN RECORD OF THIS MEETING TO REFLECT ALL THE PROCEEDINGS OF THE BOARD. MCA 7-4-2611 (2)(B). TIMESTAMPS ARE INDICATED IN RED, WITHIN EACH AGENDA ITEM BELOW, AND WILL DIRECT YOU TO THE PRECISE LOCATION SHOULD YOU WISH TO REVIEW THE AUDIO SEGMENT.

THESE MINUTES ARE PARAPHRASED AND REFLECT THE PROCEEDINGS OF THE CASCADE COUNTY PLANNING BOARD AND ARE CONSIDERED A DRAFT UNTIL FORMALLY APPROVED BY THE PLANNING BOARD.

STAFF ATTENDEES: Kevin Angland, Carey Ann Haight, Raina Leavens (online), Phoebe Marcinek (Online), Alisha Osborne, and Charity Yonker.

PUBLIC ATTENDEES: Anton Giger, Judy Higgins, Rick Higgins, Ronda Wiggers.

1. CALL TO ORDER: Richard Liebert called the meeting to order at 09:00 AM [00:00:58].

2. ROLL CALL:

BOARD MEMBERS PRESENT: Dexter Busby, Richard Liebert (Online), Bruce Moore, Beth Schoenen (Online), Rob Skawinski (Online).

BOARD MEMBERS ABSENT: Elliot Merja, Sara Murphy.

3. APPROVAL OF THE MINUTES :

A. Draft Meeting Minutes for Nov 15, 2022 [00:02:34]

1. Board Discussion & Decision

Richard Liebert: Says the minutes have been distributed and posted online. He asks if this is correct.

Charity Yonker: Affirms.

Dexter Busby: Moves to approve.

Richard Liebert: Says so moved and asks if there is a second.

Bruce Moore: Seconds the motion.

Richard Liebert: Asks if there is any further discussion, correction or addition. Hearing none, he calls for the vote.

All in Favor, motion carries 5 – 0.

4. OLD BUSINESS: None.

5. NEW BUSINESS:

A. Preliminary Plat Application for River Bend Estates No. 4 Subdivision [00:03:37]

1. Kevin Angland presents the Staff Report.

Motions Presented for the Board's Consideration:

A: I move that the Cascade County Planning Board recommend, after consideration of the Staff Report and Findings of Facts, deny the River Bend Estates Subdivision No. 4 Preliminary Plat;

Or

B: I move that the Cascade County Planning Board recommend, after consideration of the Staff Report and Findings of Facts, adopt said Staff Report and Findings of Facts, and approve the River Bend Estates Subdivision No. 4 Preliminary Plat, subject to the following conditions:

1. A provision in the Homeowners' Association's (HOA) Covenants, Conditions, and Restrictions (CCRs) must provide that a 100-foot open space buffer must be established between any structures and adjacent prime agricultural lands.
2. Include a "Notice of Agricultural Activities" on the final plat stating in effect: "This subdivision is in the vicinity of existing agricultural activities which may affect a purchaser's use and/or enjoyment of his/her property."
3. Reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer these water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserved and severed any remaining surface water rights from the land prior to final plat.
4. Cause to be recorded in conjunction with the final plat, a statement of waiver placed on the final plat requiring property owners of each lot in the subdivision to take part in any Rural Special Improvement District (RSID) for the reconstruction, improvement or perpetual maintenance of any county road in the vicinity used to access the major subdivision, or any other road that can be used to access these lots as determined by Cascade County, provided that all other property owners served by said road share equitably in such an RSID. This waiver shall expire 20 years after the date the final plat is filed with Cascade County.
5. Provide safe and adequate access including all internal private roads and cul-de-sacs, street signs, and stop signs, must be designed, constructed, installed, inspected, and certified by a licensed professional engineer that they meet at a minimum the Cascade County Subdivision Road Specification.
6. Include on the final plat a statement certifying the status of the internal subdivision roads.
7. Cause to be recorded in conjunction with the final plat, HOA CCRs with provisions granting sufficient authority and procedural mechanisms to administer, enforce, and fund the perpetual maintenance and discretionary improvement of the public rights of way created by and indicated on the final plat.

8. A statement shall be included on the Final Plat stating: "Lot owner(s) shall comply with the required Noxious Weed Management Plan, approved by the County Weed Supervisor."
9. Submit a written Weed Management Plan to the Cascade County Weed Board specifying the methods for weed management procedures with regards to this development and incorporate it into the HOA CCRs and file with the Clerk & Recorder's Office along with the Final Plat.
10. All vegetation disturbed during construction shall be reestablished with vegetation types that have been recommended by the MSU Extension Office.
11. A copy of the MDEQ General Discharge Permit for Stormwater associated with construction activity in order to subdivide shall be submitted prior to final plat approval, if the disturbed area will exceed one (1) acre.
12. The Montana Department of Environmental Quality (MDEQ) Certificate of Subdivision Approval (COSA) must be provided prior to final plat approval.
13. Inclusion in the HOA and on the Final Plat a covenant restricting structure height of no greater than five hundred (500) feet in height.
14. Include in the HOA CCRs a provision for maintaining the fire cistern road approach.
15. Include in the HOA CCRs that the HOA shall be responsible for the perpetual maintenance of the fire suppression system, equipment, and appurtenances, including on-going water level monitoring, water refilling, repairs, and electronic monitoring systems.
16. In the event a residential dwelling is placed or constructed on the remainder lot, a water supply for fire protection will be required consisting at a minimum of 40,000 gallons of water.
17. The utility easements must be shown on the plat with dashed lines.
18. Correct any errors or omissions on the preliminary plat prior to final plat approval.
19. Complete required improvements within the proposed subdivision prior to approval of the final plat, unless a bond or other reasonable security approved by the County Commissioners is obtained prior to final plat.
20. Include in the HOA CCRs a provision limiting livestock in accordance with the Cascade County Zoning Regulations.
21. Include in the HOA CCRs a provision prohibiting commercial and industrial uses.
22. Cause to be filed with the final plat, a Declaration of Covenant declaring that all of the properties described shall be held, sold, and conveyed subject to the following covenant which shall run with the real property and be binding on all parties having any heirs, successors, and assigns, and shall bind each owner thereof and the covenant may be revoked for any or all parcels within the subdivision only by mutual consent of the owners of the parcels in question and the governing body of Cascade County.

2. Board Discussion [00:14:35]

Richard Liebert: Asks if there are any questions for Staff from the Board.

Dexter Busby: Says he has a couple of questions.

Richard Liebert: Says go ahead.

Dexter Busby: Asks about surface water rights as mentioned in condition number three (3) and whether he is reading it correctly.

Rick Higgins: Says there is no water rights.

Dexter Busby: Asks if there are surface water rights.

Rick Higgins: Says he thinks there are employees, unless he is mistaken, but they do not have water rights to pump out of the Missouri [River] or a deep well.

Dexter Busby: Says a deep well you would need subsurface rights.

Jason Crawford: Says there is no surface water rights out in Missouri riverfront property.

Dexter Busby: Asks about subsurface water rights specifically for this property.

Jason Crawford: Says not specifically for this property.

Carey Ann Haight: Asks for the speakers to identify themselves for the record.

Jason Crawford of P.O. Box 162, Helena, MT: Says his name is Jason Crawford, and he is an engineer with Triple Tree Engineering, and he is representing Mr. Higgins' development.

Dexter Busby: Says he is not sure why if there are no existing water rights why Condition #3 is included.

Richard Liebert: Asks Mr. Busby if he had another question.

Dexter Busby: Says yes, thought it is not really a question but a comment on Condition #11. He says the discharge permit only really covers the developer to make the roads and utilities in there, but one can end up in nasty court cases when they do not include in their sales agreement that any building activity that requires a permit gets one, and any activity that is under an acre uses best management practices. He says he thinks it needs to be added.

Kevin England: Says we can strike Condition #3.

Dexter Busby: Says he thinks language similar to that needs to be added to Conditions #11 to protect the developer from future legal activities by the state.

Rob Skawinski: Says he does not think the Board ought to get into that, as it is an issue for the state or a higher level. If we begin to require individual landowners to get stormwater discharge permits, those are detailed permits that require a certified Stormwater Pollution Prevention Plan Administrator to develop, submit and then administer until the closeout of the permit. The permits are approximately \$1,200 to apply for, and if you have never done one or you must hire an administrator to do it, it will cost another \$2,000 dollars for that. He reiterates that this is not something the Board should involve themselves with requiring individual lot owners to do.

Dexter Busby: Says to Mr. Skawinski that everything he has said is true, however the problem is whether the state views it that way. It will protect the developer from the state, and it will protect the individual landowners if they do not do it. The Montana Supreme Court is now recommending that for under an acre, to protect the developer.

Rob Skawinski: Says he thinks that should be left up to the developer. He says he is a Stormwater Pollution Prevention Plan Administrator and does many permits, approximately fifty (50) a year, and does not want to see that imposed on individual home or landowners for either county or city lots. It is a burden on the cost of building a home that essentially provides no value to the actual property.

Dexter Busby: Says it is just a recommendation that the county consider it, especially the best management practices. That is not a permit required and if they do not disturb under one acre, they do not need any permitting.

Charity Yonker: Asks Mr. Busby if he is recommending a condition that best practices must be utilized for construction activity consisting of on (1) acre or less and a provision placed in the Homeowners' Association Covenants, Conditions and Restrictions to manage the stormwaters resulting from the subdivision.

Dexter Busby: Says yes, that is exactly what he is proposing.

Charity Yonker: Says okay.

Beth Schoenen: Asks if it will be disclosed to the purchasers of the lots that they may be subject to a \$3,200 discharge permit.

Dexter Busby: Says they would be anyway, if they disturb more than one (1) acre of ground.

Rob Skawinski: Asks why they as a county Planning Board want to get involved in that. He says he sees twenty-two (22) conditions for this subdivision, and it seems that we are making things very complicated, when we have other state agencies to oversee this stuff. He asks why the Planning Board is getting involved in Department of Environmental Quality matters when it comes to stormwater discharge. He explains that the developer must apply for one for the entire subdivision, and eventually they have to close that permit out. Until the Department of Environmental Quality requires individuals to get stormwater discharge permits, he does not see why the Planning Board needs to be involved in that.

Dexter Busby: Says they are already required to get one if they disturb more than one (1) acre.

Rob Skawinski: Says he is aware of that and reiterates his question regarding involvement of Planning Board.

Dexter Busby: Says we are already in it when we put Condition #11 in here.

Rob Skawinski: Says okay. It is going to potentially put an additional cost burden on a landowner, and it hits home for him because of the added costs from what the City of Great Falls has done over the last five (5) to seven (7) years with imposing geotechnical studies to be done on every lot with a foundation plan, which adds ten (10) to twenty (20) grand to the cost of a home. Now we are looking to add stormwater discharge for a house on a two (2) acre lot. It keeps adding additional complications to the building process. He reiterates that he believes it to be the purview of Department of Environmental Quality.

Dexter Busby: Says it is already a requirement for the law.

Rob Skawinski: Says he agrees and disagrees, as it is a gray area in the area of disturbance. He says he does not see why the Planning Board needs it as a special condition. He asks who the Board is trying to protect.

Dexter Busby: Says basically the developer, from being sued by Department of Environmental Quality after all the lots have been sold.

Rob Skawinski: Asks if the developer is asking for the Board's protection, and whether that is the Board's responsibility.

Dexter Busby: Says it was recommended that planning boards consider putting that in their requirements so they would at least be aware of it. He explains the lawsuit in Billings which ended up in the Supreme Court, where the developer won the lawsuit but lost about \$2 million dollars in legal fees. They had gotten sued by Department of Environmental Quality for runoff after the lots were sold and the developer's permit was closed out.

Rob Skawinski: Says and the developer won the case.

Dexter Busby: Says yes, and the recommendation was to put a line [of warning] in the Homeowners' Association code of regulations.

Rob Skawinski: Says okay.

Beth Schoenen: Asks if a four (4) thousand square foot house with a driveway normally exceed one (1) acre and who monitors that.

Dexter Busby: Says that is a good question. He says what got the Billings people in trouble was a downpour that involved three (3) inches in twenty (20) minutes at the edge of a city and overflowed the storm drains. There were multiple houses being built at the same time. He says he does not think Department of Environmental Quality was right, and neither did the Supreme Court, but the cost of fighting that was tremendous.

Rob Skawinski: Says to answer Ms. Schoenen's question, if I have a two (2) acre lot and decided to irrigate the entire property, I have technically disturbed over one (1) acre; if I only build a house and a driveway, I can argue I am disturbing less than one (1) acre. To landscape to have a lawn like a golf course as many people like to do, it is over one (1) acre, so then you get into people having to circumvent the system.

Richard Liebert: Says let us move on to get input from the developer himself and we will entertain other questions, amendments when we get to the motion process. He asks if the developer can speak to the discussion and state their name and address.

Jason Crawford of Triple Tree Engineering: Says he is here on behalf of Rick and Judy Higgins. Regarding what Mr. Skawinski said, there is no way he would look at it on an individual lot [basis]. An average yard is around ten (10) to fifteen (15) thousand square feet; added to a four (4) thousand square foot house, it is approximately fifteen thousand (5) square feet and the driveways are short. These are long narrow lots. With the addition of the driveway it would still be under one (1) acre. It is a typical lot which would not require a Stormwater Pollution Prevention Plan. He explains that they have dealt with this in the past and that it is the lot owner's responsibility to get a permit if they are disturbing over one (1) acre of land. He says it seems there are already rules and regulations in place to meet those Stormwater Pollution Prevention Plan requirements, but he understands the discussion. He says he anticipates most of these [lots] will be less than one (1) acre of disturbance.

Richard Liebert: Asks if it would be a headache to the developer.

Jason Crawford: Says that what they are proposing is just some language in the covenants enforced by the Homeowners Association that more or less covers the requirements of a Stormwater Pollution Prevention Plan if disturbing more than one (1) acre. It seems the best way to cover that would be to include it in the Homeowners Association documents. If that is deemed necessary, it would not be too much trouble to include a paragraph or two to cover the landowner notifications.

Dexter Busby: Says not every builder is aware of it.

Richard Liebert: Says we can amend one of these conditions or language for Homeowners Association awareness.

Rick Higgins: Asks if he may speak.

Richard Liebert: Says go ahead.

Rick Higgins of 7 River Bend Drive: Says he is the developer and explains that through the state and within the COSA there is language specified by established limits, for example for one (1) it is eight (8) thousand square feet. He asks if that qualifies, as it is in place already before the property is purchased by each landowner.

Dexter Busby: Says it really does help, but the best management practices are not really imposing costs on the developer, and generally not even on the builder, it just covers how the piles of dirt are prevented from blowing off the property.

Richard Liebert: Says he has a question for Mr. Higgins.

Rick Higgins: Says yes.

Richard Liebert: Asks for clarification as to whether River Bend Estates phases one, (1) two (2) and three (3) are already constructed.

Rick Higgins: Says correct.

Richard Liebert: Says so the HOA for one, (1), two (2) and three (3) would extend to number four (4).

Rick Higgins: Affirms.

Richard Liebert: Says regarding Condition #11 there might need to be a sentence added to address what Mr. Busby was saying, however, he does not want to do anything that would be a hindrance. We will come back to that after we hear from the proponents and opponents.

3. Public Hearing opens at 09:32 AM, [00:33:22].

Public Proponents:

Anton Giger of PO Box 2668 Great Falls: Says he is a neighbor to this project, and he recommends approval. Thank you.

Richard Liebert: Asks if there are any others online.

Charity Yonker: Says no, there are not.

Public Opponents: None.

General Public Comments Regarding River Bend Estates No. 4 Subdivision :
Public Hearing closes at 09:34 AM.

4. Board Discussion & Action: [00:35:03]

Richard Liebert: Says let us go back to any other discussion before getting into motions or amending. He asks if there are any other questions or discussion for the Board to share.

Dexter Busby: Asks if the developer has any plans for more townhomes on this development.

Rick Higgins: Says yes, there are two (2) lots to be designated multifamily townhomes.

Dexter Busby: Says they will be created on the plat.

Rick Higgins: Affirms.

Jason Crawford: Says he does not think they are on the plat. He asks if they are townhouses or condos.

Rick Higgins: Says they are going to be townhomes.

Jason Crawford: Says that changes things by quite a lot. If these are going to be townhomes, then we are not within regulations. Because these are two (2) acre lots, and townhomes need to be one (1) acre lots.

Rick Higgins: Says these two (2) have already been approved.

Jason Crawford: Asks if they have been approved for townhomes.

Kevin Angland: Says they need a Special Use Permit for two (2) dwellings.

Rick Higgins: Says okay.

Jason Crawford: Says he guesses they would do the same thing for these two (2) lots.

Charity Yonker: Asks Mr. Crawford to show us on the plat which lots they will be.

Jason Crawford: Says these two (2) lots right here [*he indicates Lot 37 and Lot 38*].

Dexter Busby: Says Lots #37 and #38.

Jason Crawford: Says yes.

Dexter Busby: Says they are up against the other townhomes.

Jason Crawford: Says that is right.

Judy Higgins: Says at the time, they would put these into townhome blocks, and we would have to come before the Planning Board again to get a Special Use Permit.

Kevin Angland: Asks if she means the Zoning Board of Adjustments.

Judy Higgins: Says yes, in front of somebody.

Kevin Angland: Says similar to what you guys have done.

Judy Higgins: Says yes, thank you.

Dexter Busby: Says he thinks it is easier to put it on the plat.

Rob Skawinski: Says he agrees with that.

Richard Liebert: Asks if we need an amendment for what is being discussed now.

Beth Schoenen: Says we may as well.

Rob Skawinski: Asks if it is possible to get that on the plat so they can avoid a Special Use Permit later.

Dexter Busby: Says he does not think they can avoid it, but it makes it a little more comfortable at the Zoning Board of Adjustments meeting.

Jason Crawford: Asks if that would be a condition of approval to pursue a Special Use Permit.

Charity Yonker: Says no.

Dexter Busby: Says no, that is not a condition.

Charity Yonker: Says no, that is separate, once subdivision goes through. Then we will just work on the zoning portion of it.

Jason Crawford: Says yes.

Charity Yonker: Says if the preliminary plat needs to be amended, that could be a condition, so include the townhome designation on Lots 37 and 38.

Richard Liebert: Asks if they are talking about an additional condition.

Charity Yonker: Says yes.

Richard Liebert: Asks if this would be Condition #23.

Charity Yonker: Says that is correct.

Richard Liebert: Says alright.

Rick Higgins: Says he is confused, because Phase I, Lot 6 and Phase II Lots 13 and 14 were designated multi-family and it was included in the Certificate of Subdivision Approval. He asks if there is anything different they are trying to do now with this one. There is almost a cluster development.

Dexter Busby: Says that is right, and that is why it is helpful to get it on the plat.

Rick Higgins: Says he agrees, that is what they will do.

Richard Liebert: Says we need to make a couple of amendments here on the motion to approve this, so let us have the language for Condition #23, we need a motion for that, and a second to make an amendment.

Dexter Busby: Asks Ms. Yonker how she wants it to read for Condition #23.

Charity Yonker: Says if I may propose a Condition #23, "developer shall designate townhomes on Lot 37 and Lot 38 on the Final Plat".

Dexter Busby: Says so moved.

Carey Ann Haight: Says she thinks they did not have an original motion on the table.

Richard Liebert: Says you are right. He asks if there are any other final questions before we go to this amendment process. Hearing none, we have the following recommendation for the Board's consideration. We can deny, approve, approve with amendments, or table. He asks what the Board would like. He says we need a main motion.

Dexter Busby: Motions to approve with conditions.

Richard Liebert: Says okay, at this time, we have some amendments to make. Let us start with the first one, which would be Condition #23. He asks if this is correct.

Charity Yonker: Says yes.

Richard Liebert: Says let us start with that again.

Dexter Busby: Motions to add Condition #23 for the language.

Charity Yonker: Says, "developer shall designate townhomes on Lot 37 and Lot 38 on the Final Plat".

Dexter Busby: Says we will need a second to that.

Richard Liebert: Says the amending motion has been made, correct.

Dexter Busby: Affirms.

Richard Liebert: Says now we need a second.

Beth Schoenen and Rob Skawinski: Second the motion.

Richard Liebert: Asks if there is any additional discussion or reflection. Hearing none, he calls for the vote.

All in Favor, motion carries 5– 0.

Richard Liebert: Says that was for adding Condition #23, correct.

Charity Yonker: Says correct.

Richard Liebert: Says he wants to ask for public comment on that.

Charity Yonker: Says we are not seeing any.

Richard Liebert: Says he apologizes for being out of sequence. He asks if the Board is considering additional changes for Condition #11 as discussed earlier, and if any language to articulate or not.

Dexter Busby: Says yes. He moves to add a line that Ms. Yonker has written to item #11.

Richard Liebert: Says Condition #11, correct.

Dexter Busby: Affirms.

Charity Yonker: Says we are proposing the language, "a copy of the Montana Department of Environmental Quality general discharge permit for stormwater associated with construction activity in order to subdivide shall be submitted prior to final plat approval if the disturbed area will exceed one (1) acre, and a provision placed in the Homeowner's Association Covenants, Conditions and Restrictions requiring best practices."

Dexter Busby: Says on under one (1) acre.

Jason Crawford: Says on under one (1) acre, this is more stringent than DEQ requirements.

Beth Schoenen: Asks if it can be over one (1) acre.

Dexter Busby: Says this is for under one (1) acre.

Rob Skawinski: Says Best Management Practices is an industry term, so there is a manual published by Department of Transportation and other engineering firms. People are not going to know what Best Management Practice means, so we are asking them to put that in the Homeowners Association to use Best Management Practices when they are building their house. He asks if that is what the Board is doing.

Dexter Busby: Says yes.

Rob Skawinski: Says okay.

Jason Crawford: Says he thought per the previous discussion that they were not going to be doing anything any more stringent than Department of Environmental Quality already requires, and that they are only making the landowners aware of the current requirements. Putting a requirement into the Homeowners' Association that requires them to implement Best Management Practices would be in addition to what the Department of Environmental Quality requires now. This is different than what was initially thought. He asks if the intent is to require people to implement Best Management Practices for less than one (1) acre.

Dexter Busby: Says yes, and that is basically the rule now because if you get runoff you can still be seriously affected.

Jason Crawford: Says there are no laws, guidelines or rules that the case of which you are speaking in Billings was over a disturbance of over one (1) acre.

Dexter Busby: Says those were individual lots that caused it.

Richard Liebert: Says the point the engineer is making is that we just educate the members of the HOA about these requirements or concerns.

Dexter Busby: Says yes.

Richard Liebert: Says let us re-craft that sentence based upon the engineer's comment to let the people in the Homeowners Association know of the consequences and that it is on them and not a burden to the developer. He asks if that is what we want.

Dexter Busby: Says yes.

Charity Yonker: Says in the previous motion for language we used "required Best Management Practices", so we can use "recommend" or "encourage".

Dexter Busby: Says "recommend".

Richard Liebert: Says recommended does not mean directed, though, that is only a recommendation.

Dexter Busby: Says that is right.

Richard Liebert: Asks if that will be a satisfactory addition with one or two sentences. Let us craft the language correctly so it is clearly understood.

Charity Yonker: Says this is the language of [Condition] #11, followed by, "and place in the Homeowners Association Covenants, Conditions and Restrictions a recommendation that Best Management Practices be utilized for disturbances of less than one (1) acre to manage stormwater runoff".

Richard Liebert: Says he thinks that is sufficient.

Dexter Busby: Says that basically gets the developer out of the business of policing these folks.

Beth Schoenen: Asks if that is over one (1) acre or under one (1) acre. She says she is trying to understand.

Charity Yonker: Says under one (1) acre.

Dexter Busby: Says under one (1) acre. Over one (1) acre, they are required by Department of Environmental Quality anyway, which is on the front end of this.

Rob Skawinski: Says how about we just recommend best management practices be used, period.

Richard Liebert: Says let us go with that. We will vote on the amendment with a motion anyway.

Carey Ann Haight: Says we still have public comment.

Richard Liebert: Says go ahead.

Ronda Wiggers of Great Falls Homeowners Association: Says she has done this for a number of years and also represents some Homeowners' Associations at the legislature. She says she thinks it is a bad precedent for the Board to put guidelines and legal recommendations for homeowners to keep them from sued in the Homeowners Association. You are opening yourself up to Homeowners Association disagreements. If you build a house, you have to know what you are doing, and you have to have certain risks. She says she thinks it is not the Board's place to be requiring the Homeowners Associations to add Best Management Practices to the building of the house. Department of Environmental Quality regulates over one (1) acre. The possibility of getting sued is not a valid reason to add it, and if you begin to add everything on the basis of the probability of getting sued, it may backfire. She says that it sets a bad precedent and asks that it not be added.

Richard Liebert: Says let us go back to the language of the amendment and we will have a vote and proceed from there.

Charity Yonker: Says on condition number eleven (11), it would be the same language followed by a comma, and then "and place in the HOA CCRs a recommendation that Best Management Practices be utilized for disturbing one (1) acre or less for storm water runoff". That was what was proposed by Mr. Busby, and we have since had a recommendation to change the language to leave it as "and recommend Best Management practices be utilized".

Richard Liebert: Says that is the amendment. Okay, I assume Mr. Busby will make a motion for that.

Dexter Busby: Motions to approve.

Richard Liebert: Says now we need a second.

Charity Yonker: Says with the language that recommends best management practices be used.

Dexter Busby: Affirms.

Richard Liebert: Says okay, that is the motion. We must have a second.

Bruce Moore: Asks what the end of it was.

Charity Yonker: Says, "and recommend Best Management Practices be used".

Richard Liebert: Asks if there was a second.

Dexter Busby: Says Mr. Moore seconded it.

Richard Liebert: Says okay and asks who seconded it.

Charity Yonker: Says Mr. Moore seconded it.

Richard Liebert: Says now we will have additional discussion or questions. He asks if there is additional public comment or questions from Board members.

Beth Schoenen: Asks Ms. Yonker to re-read the conditions as her audio had cut out.

Charity Yonker: Says sure and repeats the wording for Ms. Schoenen.

Rob Skawinski: Says he has a comment. He says he believes adding that will cause undue burden, and then gives examples of best management practices, and explains that it can become burdensome due to the installation requirements and reiterates that he does not feel the Board should be involved in the any part of that and just let Department of Environmental Quality handle that.

Richard Liebert: Says thank you Mr. Skawinski and asks if there is any additional public.

Charity Yonker: Says we are not seeing any.

Richard Liebert: Calls for the vote.

Vote Called: *Dexter Busby and Bruce Moore vote in favor, Rob Skawinski, Richard Liebert, Beth Schoenen vote against, motion fails 2– 3.*

Richard Liebert: Says that is three (3) ayes for “no”, and two (2) for “yes”.

Charity Yonker: Says that is three (3) for “no”.

Richard Liebert: Says three (3) for no and one (1) for yay.

Charity Yonker: Says two (2).

Richard Liebert: Says Mr. Moore did not vote.

Charity Yonker: Says two (2) for “yes”.

Bruce Moore: Says yes.

Richard Liebert: Asks Mr. Moore if he voted. He says that is two (2) for and three (3) against, the amendment did not pass. He asks if we are back to the main motion.

Charity Yonker: Says correct.

Richard Liebert: Says alright, thank you. With all the conditions plus Condition #23, so back to the main motion. He asks if the main motion was made and seconded.

Charity Yonker: Says yes, and we still need to strike Condition #3.

Richard Liebert: Says strike Condition #3.

Charity Yonker: Says yes.

Dexter Busby: Says he will move to strike Condition #3.

Richard Liebert: Says we will need a second.

Bruce Moore: Seconds the motion.

Richard Liebert: Asks if there are any other comments, discussion from Board members. He asks the Staff if there is any public comment regarding striking Condition #3, whether in person or online.

Charity Yonker: Says she is seeing no comment.

Richard Liebert: Says okay thank you and calls for the vote.

All in Favor, motion carries 5– 0.

Richard Liebert: Asks if that was unanimous.

Charity Yonker: Affirms.

Richard Liebert: Says Condition #3 is removed from the main motion to approve the application. Now we are back to the main motion for the application, for which a motion has been made and seconded. He asks if this is correct.

Dexter Busby: Affirms.

Rob Skawinski: Says he has one more question. He asks if the Staff can explain to him the reason for that 100-foot buffer in Condition #1.

Kevin Angland: Says he can answer that. He explains that during the review process we also have to take into consideration the remainder lot, and there was some prime agricultural land found on Mr. Giger’s property. With the remainder lot being under 160 [acres], it is still a lot so we want to create that 100-foot buffer zone so we are not losing any more of that prime agricultural land.

Charity Yonker: Says and to mitigate any potential conflicting use with the residential development in the agricultural use.

Rob Skawinski: Says if he understands it correctly, it means any structure, including outbuildings, a shed, or barn.

Kevin Angland: Says that is correct.

Jason Crawford: Says that is only on the remainder lot.

Kevin England: Says yes, that is where we found the majority of the prime agricultural land, included mainly in the twelve (12) subdivided lots right on the east boundary line.

Judy Higgins: Asks if they can bring the map up again.

Rob Skawinski: Says he just knows if bought a lot... He apologizes.

[Rick Higgins and Jason Crawford talking inaudibly amongst themselves.]

Charity Yonker: Says we are trying to share the screen with the plat on it.

Richard Liebert: Says his screen is frozen so he cannot see much.

Judy Higgins: Asks Kevin England where this is.

Kevin England: Says on the boundary with the Giger lot *[points out the location on the plat]*.

Judy Higgins: Says so if we were to develop that, we would have conditions, is that correct.

Kevin England: Says yes, and it will be conditioned on this one. If that remainder lot is further developed *[inaudible]*.

Jason Crawford: Asks if they got permission from the neighbor if that requirement goes away.

Charity Yonker: Says this is a requirement of subdivision, so that would require a variance.

Rob Skawinski: Asks if Ms. Yonker could repeat that and ask if that is in the Subdivision Regulations.

Charity Yonker: Says yes, she will find the provision. She reads the provision aloud to the Board for the required design standard. Any deviation from that standard requires a subdivision variance.

Jason Crawford: Says it looks as though it indicates a property is already used for agricultural purposes.

Charity Yonker: Says it is still agricultural use.

Richard Liebert: Says so the subdivision variance process allows for some latitude. He asks if this is correct.

Charity Yonker: Asks Mr. Liebert to repeat the question.

Richard Liebert: Asks if the subdivision variance process allows for some latitude.

Charity Yonker: Says that is correct, but as of right now we do not have a variance application before us.

Richard Liebert: Asks how long that process takes.

Charity Yonker: Says that it would have to come back through the Board for consideration, so at the next public meeting.

Richard Liebert: Says we are not there yet. He asks whether someone wants to motion to change Condition #1, or we will just move on.

Rob Skawinski: Says he got his question answered, we can move on.

Richard Liebert: Says thank you, and good point. He says we are back to the main motion. It has been made and seconded. He asks if there are any other comments from the Board, Staff or public.

Charity Yonker: Says we have public comment.

Jason Crawford: Asks if the recommendation is approved and the developer would like to pursue a variance, what the proper process would be.

Kevin England: Says it would have to be tabled and would have to come back to the Planning Board before going back to the Commission.

Jason Crawford: Asks Mr. Higgins if he understands that.

Rick Higgins: Says no.

Jason Crawford: Says we would have to do this again.

Rick Higgins: Says it is in places and to do something to change it we have to go through the process.

Jason Crawford: Says the only process we have to do is go back through the meeting. We would prepare the variance process and submit, they would table it, they would not make a decision today until they get the variance request so they can consider the variance and then at the next meeting they would approve the entire subdivision with or without the variance request.

Rick Higgins: Asks about putting easements for utilities and access on the current subdivision the same as they had done with earlier phases of the subdivisions. He says that the requirement for setback and not being able to put an easement there would detract from the value as it would be idle ground and whoever purchases it in the future would need to be able to maintain it.

Kevin Angland: Says that with the next phase could potentially turn into parkland, if that is the route so it could still be used.

Jason Crawford: Asks whether they could request the variance if they decide to develop that remainder lot in the future.

Kevin Angland: Says they would have to request in now, since the remainder lot is under 160 [acres] and would be considered part of this subdivision. It would have to be tabled and come back through the Board.

Jason Crawford: Says otherwise we would have to be trying to get that removed from the plat.

Richard Liebert: Asks Ms. Yonker if they need to amend Condition #1.

Charity Yonker: Says we do not have a variance application in front of us, which is a requirement of the subdivision regulations, which covers Condition #1. They are discussing whether to table because they wish to bring forward the variance, and when the variance application is brought forward it would be re-visited next month for recommendation for final action for the recommendation to the Commission.

Richard Liebert: Asks if we are essentially measuring twice and cutting once.

Dexter Busby: Says that was his question, which is the question Mr. Crawford had asked, if they can ask for a variance when they develop the remainder lot.

Kevin Angland: Says that because it is under 160 acres, it is technically part of this subdivision and would need to be done with this subdivision.

Jason Crawford: Asks if it could go on this plat and then be removed when we develop the next one.

Charity Yonker: Says it can be amended, yes.

Jason Crawford: Says okay.

Richard Liebert: Asks if it is correct that we need a variance regarding Condition #1.

Rob Skawinski: Says he does not think so.

Unknown: Asks what the question was.

Charity Yonker: Says it was whether we need a variance for Condition #1.

Richard Liebert: Says he does not want to delay the process for the developer, but he wants to ensure we cover what our own statutes require.

Dexter Busby: Says just leave it in place.

Charity Yonker: Says she will summarize this and ask that the Applicant correct her if it she misstates the summary. She says the Applicant has decided to move forward and deal with

applying for a variance in the next subdivision for that remainder lot where the 100-foot buffer is going to be placed is going to be placed on this plat. She asks if this is correct.

Rick Higgins: Says yes.

Richard Liebert: Asks Ms. Yonker to confirm that it does not change anything with Condition #1.

Charity Yonker: Affirms.

Richard Liebert: Says we will cross that river when we get to it. Returning to the main motion, which was made and seconded, he asks if there is any additional public comment, or from Board members or Staff. Hearing none, he calls for the vote.

All in Favor, motion carries 5 – 0.

Richard Liebert: Asks if the vote was unanimous.

Charity Yonker: Affirms.

Richard Liebert: Asks if there are any further steps to be taken.

Charity Yonker: Says no.

Richard Liebert: Says okay and wishes the developer good luck.

6. BOARD MATTERS [01:15:00]

A. Reminder-Board Member Applications Due to Commission Office by Friday, Dec 16, 2022.

Richard Liebert: Asks if there is any update on that as the deadline was last week.

Charity Yonker: Says the matter will be on the Commission Work Session meeting tomorrow, and need the applications in so we can get them on the Commission's December 27, 2022 meeting. She asks Mr. Skawinski if he has been able to re-apply yet.

Rob Skawinski: Says he is filling it out now and will have it to her today.

Charity Yonker: Says perfect. She says Ms. Murphy is also expiring, and Mr. Liebert is expiring but he has reapplied.

Richard Liebert: Says he has applied awhile back. He asks if there is anything further on Item A. Hearing none, we will now go to Item B.

B. Request for Conservation District Term Expiration Date for Elliot Merja.

Richard Liebert: Asks if Ms. Yonker can elaborate.

Charity Yonker: Says yes, we received the information yesterday. He was re-appointed through the Conservation District in December, and he will be starting his next four (4) year term in January. We have got that sorted out for the record.

Richard Liebert: Says just to have it for the record. On to Item C.

C. Approve Tentative Planning Board 2023 Meeting Schedule.

Richard Liebert: Asks for Ms. Yonker to elaborate on this item as well.

Charity Yonker: Says the tentative meeting schedule was provided in the packets, and that there will be a Planning Board meeting set for the third Tuesday of every month as long as the Board is good with all those proposed dates. If you would like to entertain a motion, we can get that approved and posted on the website, and also help in our planning process with projects coming forward.

Richard Liebert: Says alright and asks if we will need a motion for that.

Charity Yonker: Says yes, please.

Richard Liebert: Says we will entertain a motion to approve the 2023 schedule.

Beth Schoenen: Motions to approve.

Richard Liebert: Says thank you, and we need a second.

Rob Skawinski: Seconds the motion.

Richard Liebert: Asks if there are any other comments or questions.

Charity Yonker: Says she is not seeing any.

Richard Liebert: Calls for the vote.

All in Favor, motion carries 5 – 0.

7. PUBLIC COMMENTS REGARDING MATTERS WITHIN THE BOARD 'S JURISDICTION [01:18:49]

Richard Liebert: Says he invites the public to come up state their name at the podium or if online just state their name and address.

Charity Yonker: Says there is no one in the gallery and no one online for the public.

Richard Liebert: Says okay. He asks if there are any other comments from Board or Staff before we adjourn.

Charity Yonker: Says there is nothing more.

Richard Liebert: Says thanks to the Planning Staff for the nice card, he wishes everyone a Merry Christmas and New Year and see you all next time.

8. Adjournment at 10:19 AM [01:19:35]

Richard Liebert: Motions to adjourn

Dexter Busby: Says so moved.

Richard Liebert: Calls for the vote.

All in Favor, motion carries 5 – 0.

DRAFT