

Flathead Lakers

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March 21, 2008

Flathead County Planning Board
Flathead County Planning & Zoning
1035 1st Ave W
Kalispell, MT 59901
via e-mail: msevier@co.flathead.mt.us and bgrieve@flathead.mt.gov

Re: North Shore Ranch subdivision proposal

Dear Planning Board Members:

Please accept the following comments submitted by the Flathead Lakers opposing the North Shore Ranch subdivision as currently proposed. The Flathead Lakers is a nonprofit organization working for clean water, healthy ecosystems and lasting quality of life in the Flathead Watershed. The Flathead Lakers was founded in 1958 and currently has over 1,300 members.

Some places are too special and too vulnerable to rely on numerous mitigation measures, multiple permit conditions, special construction methods, and difficult to enforce covenants in order to protect the Flathead's waters, wildlife and quality of life. The North Shore of Flathead Lake is one of those places.

The North Shore comprises a special combination of beautiful scenery, farm lands, lakeshore, wetlands and riparian habitat. It is a hot spot for waterfowl and other birds and for bird hunting. The area's wetlands and vegetated buffers help protect water quality in Flathead Lake. These natural assets contribute to Flathead County's quality of life and economy. In fact, the county's quality natural environment has become a competitive advantage and a major force driving economic growth in the valley. High density development at the North Shore could seriously damage these assets.

The density of the proposed North Shore Ranch subdivision has not been substantially changed from the original application and remains inappropriate for this unique area due to:

- the shallow groundwater,
- prime agricultural soils,
- risk of flooding,
- the significant impacts on the adjacent U.S. Waterfowl Production Area, waterfowl, and other wildlife,
- remaining questions about the capacity of the Lakeside Sewer District to serve this project,
- lack of guarantee that the proposed buffer area and wetlands next to the Waterfowl Production Area will be permanently protected through a conservation easement and managed to protect wildlife values,
- potential safety hazard of building over very shallow groundwater with the soil types in the project area.

Flathead County Growth Policy and Subdivision Regulations

Several goals and policies of the Flathead County Growth Policy, the Montana Subdivision Regulations and the Flathead County Subdivision regulations are relevant to this subdivision

proposal and support giving serious consideration to its environmental impacts.

Flathead County Growth Policy; Although the new Flathead County Growth Policy, adopted over a year ago, includes many policies that would indicate that the proposed North Shore Ranch subdivision is inappropriate for this location, the county has yet to pursue many of the growth policy implementation strategies relevant to this proposal. The county's Subdivision Report #FPP-07-32 dated February 1, 2008 indicates those policies cannot be applied to this proposal. We believe that this disregards the intent of the Growth Policy.

The Growth Policy states that its purpose is to "establish goals and policies that build a foundation for safe and healthy growth that preserves Flathead County's most valued characteristics." (Chapter 1, Introduction). Approval of the North Shore Ranch subdivision, as proposed, would assure that the Growth Policy does not achieve this purpose. The following policies are all relevant and should be considered in the context of this subdivision proposal:

- P.4.2 Identify lands most suited to agriculture (appropriate soils, access to water, shape and size of parcels etc.).*
- P.4.3 Identify a desirable gross density for rural residential development that retains land values, preserves the agricultural character of the community and allows for efficient provision of government services (law enforcement, fire protection, transportation, etc.).*
- P.4.7 Create a n agricultural/private timber lands board, with significant representation from the ag/timber community and the Flathead County Planning Board, to propose plans for conserving working farms and ranches, clean water and key wildlife habitat.*
- P.8.2 Identify required criteria for various densities that support the seven elements of the public's vision outlined in Chapter 1.*
- P.9.1 Identify open spaces that serve a critical role in public and environmental health, safety and general welfare.*
- P.9.2 Create regulatory incentives for the preservation and protection of open spaces during the development process.*
- P.9.3 Consider and develop specifications for various buffers to protect open spaces.*
- P.10.7 On lands that contain areas both suitable and unsuitable for development, encourage open space development design techniques to cluster dwellings away from hazardous and/or unsafe areas.*
- P.11.3 Determine road and recreational waterway corridors with scenic resources that are valued by both residents and visitors.*
- P.21.2 Develop methods to enhance a sustainable agricultural and timber industry through community-based incentives.*
- P.21.5 Preserve the natural amenities that characterize the county in order to attract industries and businesses that maintain the high quality of life that attracts visitors and new residents, and sustains the tourism sector of the economy.*
- P.23.4 Areas in proximity to employment and retail centers should be recognized as more suitable for higher residential densities and mixed use development.*
- P.40.4 Encourage rural low-intensity land uses in areas where the groundwater is less than eight feet unless scientific evidence shows that a higher or lower intensity of land use is appropriate.*
- P.41.2 Discourage unmitigated development in areas identified as critical wildlife habitat.*

The following policy is significant in light of local community efforts to protect the North Shore's special attributes:

P.4.6 Develop proposals for community-based incentives for farmers and forest landowners to maintain farms/forest in order to share the cost of preserving the custom, culture, and character of agriculture in Flathead County.

The Flathead Lakers are working with the Flathead Land Trust, land owners and other groups and agencies to achieve this policy on the North Shore (more information on this below under “A Vision...”). We encourage Flathead County to support this effort to help achieve this policy.

It is also important to note that most of the area proposed for this subdivision is in the 500-year floodplain. The Growth Policy includes a policy to “discourage high density development within the 500-year floodplain (P10.1, please see enclosed map).

Montana and Flathead County Subdivision Regulations: Montana law requires that subdivision regulations be in accordance with the growth policy:

76-1-606. Effect of growth policy on subdivision regulations. When a growth policy has been approved, the subdivision regulations adopted pursuant to chapter 3 of this title must be made in accordance with the growth policy.

We urge you to give careful consideration to whether this has been achieved in relation to the Growth Policy goals and policies listed above.

The stated purpose of the Montana Subdivision Regulations, 76-3-102, includes:

(5) require development in harmony with the natural environment;

Due to the unique attributes of this site, including its proximity to a federal Waterfowl Production Area, the proposed subdivision cannot be considered in harmony with the natural environment. The Montana Subdivision Regulations criteria for local review, 76-3-608, include:

the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

The purpose and criteria in the Montana Subdivision Regulations are reiterated in the Flathead County Development Code and Subdivision Regulations:

1.0.2 Purpose These Regulations are intended to ensure that development will promote:

c. Development in harmony with the natural environment, air quality and surface and sub-surface water resources.

e. Conservation of open space and protection of other natural and scenic resources from unreasonable impairment and environmental degradation, including protection of endangered or threatened species.

We believe the cumulative impacts of the proposed subdivision on agriculture, the natural environment, wildlife and wildlife habitat, and public health and safety make the current proposal inappropriate for this location. A much lower density of residential development and a much greater buffer between lots and the wetlands, very shallow groundwater (four feet or less), and adjacent Waterfowl Production Area would be needed to meet the state and county environmental protection goals regarding subdivisions.

Shallow Groundwater

The Flathead Lakers remain concerned about the density of the proposed development in an area of very shallow groundwater. Runoff from residential development carries sediments and nutrients as well as toxic materials, such as heavy metals, benzene and hydrocarbons from vehicles. Although agriculture, the previous use of the property, can also contribute to nutrient pollution, it is unlikely to contribute many of the other toxic materials that have been associated with intense residential development.

The Flathead County Growth Policy states that “Shallow aquifers are intrinsically susceptible to surface sources of contamination” and includes specific goals and policies for development in areas

of shallow groundwater:

Goal 40: "Protect sensitive areas over shallow aquifers,"

Policy 40.3: "Encourage rural residential densities at an average of one dwelling unit per five acres and/or community wastewater treatment systems on sites where the groundwater is less than eight feet unless scientific evidence shows that a greater or lesser density is appropriate."

Goal 40.4: "Encourage rural low-intensity land uses in areas where the groundwater is less than eight feet unless scientific evidence shows that a higher or lower intensity of land use is appropriate."

Much of the proposed subdivision would be located where the depth to groundwater is less than eight feet, with as many as 107 lots located where the depth to groundwater is less than four feet and some where the groundwater is only two feet from the surface. This information comes from the "Minimum Depth to Water Table" map provided to the county by the applicant and the Planning and Zoning Report. The map indicates that the depths are based on water elevations measured April 17, 2006. We question whether the measurements would indicate the depth to groundwater is even closer to the surface during a wet year or when Flathead Lake is at full pool. The application and the Flathead County Planning & Zoning Report recognize that special construction methods will be required for homes built over very shallow groundwater. However, Flathead County has no building department or building permit requirement that would provide oversight and inspection to ensure that homes are constructed properly for these conditions.

In addition, the proposed Stormwater Management Plan does not adequately demonstrate that it can successfully manage stormwater runoff at this site. The Addendum to the Hydrogeological Report dated January 30, 2008 indicates that there is very slow particle movement in the groundwater at the site due to the soil types and other factors. This would also indicate that stormwater infiltration will be very slow, which could result in surface flooding. The Stormwater Management Plan does not provide sufficient information to show that stormwater collection, conveyance and retention features proposed will be adequate to absorb stormwater in this area of very shallow groundwater without the potential for significant flooding during storm events and snow melt. More details about the proposed size and number of stormwater collection and detention areas, estimates of the amounts of water generated by various storm events, the capacity of the soils and ponds to absorb those amounts of water in different seasons, and the elevation of buildings required to avoid flooding are all needed.

The shallow groundwater, questions about the capacity of the soils over this shallow groundwater to adequately absorb stormwater runoff, and questions about whether special construction methods are sufficient to protect health, safety and welfare (see staff report, pages 44-50), lead us to conclude that the proposed density is too great for this location even with the proposed connection to the Lakeside sewer system.

Lakeside Sewer Capacity

Montana law (76-4-104, section 6) requires:

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

Although the proposed subdivision has approval from the Lakeside Water and Sewer District for wastewater treatment, concerns have been raised about the district's capacity to serve this and other proposed subdivisions. The Lakeside Wastewater System 2007 Preliminary Engineering Report (available at <http://lakesidesandw.com/lakesidewastewaterreport.pdf>) indicates that the system's piping and other infrastructure will be inadequate to serve the proposed subdivision, particularly as other proposed subdivisions, some of which have also received approval for connections, are developed. The issue of sewage treatment capacity, needed upgrades, meeting Total Maximum Daily Load targets and permit limits, the sewer district's ability to add capacity to its system, including the costs of upgrading the system and who will bear the costs should all be fully evaluated and resolved

with public input prior to approval of the North Shore Ranch subdivision proposal.

In addition, there is confusion over the proper jurisdiction for sewage service to the proposed subdivision. The Somers Water and Sewer District remains concerned about Lakeside Water and Sewer District leapfrogging over their boundaries to provide sewer service to the subdivision. The Somers District also has concerns about the impact of the subdivision's domestic water wells on the water table and the District's wells. These questions and concerns must be addressed and resolved.

Wildlife Impacts

The North Shore provides important wildlife habitat. The North Shore contains the most significant wetland acreage around the lake. This large wetland complex includes the U.S. Fish and Wildlife Service Waterfowl Production Area. The adjacent upland agricultural areas provide important habitat and forage areas for waterfowl. Waterfowl travel between the WPA on Flathead Lake and other wetlands, the Flathead River and farm fields for feeding and resting. If the protected wildlife areas become islands in a sea of development, it will likely lead to the loss of a significant amount of waterfowl use of these areas and the recreational opportunities for hunting and bird watching that they provide. We do not believe the proposed buffer will adequately reduce the impacts of the activities of 290 households, their pets and horses. The information provided with the subdivision application, the previous comment letters from Montana Fish, Wildlife & Parks, and the county Planning & Zoning Report all indicate that there will be unmitigated impacts to wildlife from this subdivision. These will be irreplaceable losses.

A Vision to Protect Special North Shore Values

The Flathead Lakers have been working with the Flathead Land Trust and other partners to explore ideas for a practical conservation strategy for the North Shore area that protects its special attributes. The Land Trust has met with North Shore land owners and many are enthusiastic about exploring options that will address their needs *and* protect the many public benefits the North Shore provides. A conservation strategy could include trails, parks, wetland restoration, purchase of conservation easements, and limited development. We are striving for a win-win solution for the land owners, neighboring communities, the public and the county. We hope to work with the North Shore Ranch subdivision applicants to find a solution that meets their needs as well. This could include outright purchase of the property or a portion of the property, purchased conservation easements, and limited development clustered away from the most sensitive areas. We are optimistic that solutions can be created that will meet the needs of participating landowners, that funding can be secured, and that the public will embrace this alternative to full development of the private lands in North Shore area.

Conclusion

Despite some positive elements in the subdivision proposal, such as limiting the amount of impervious surface area by restricting road widths and connecting to the Lakeside Water & Sewer District sewage treatment plant, the subdivision as proposed is inappropriate for the special area at the North Shore of Flathead Lake. The Flathead Lakers encourage the Flathead County Planning Board to recommend denial of the subdivision as it is currently proposed.

We reiterate additional recommendations that we included in our July 18, 2006 comment letter on the original North Shore Ranch subdivision application:

- Adopt the U.S. Fish and Wildlife Service's recommendation to initiate a collaborative effort to "develop a comprehensive plan for the lower valley area that protects its unique wildlife, recreational, scenic, and quality of life values."
- Consider designating the North Shore area a "Special Consideration Area" or developing a Neighborhood Plan as a growth policy implementation tool to protect north shore wetlands, shallow groundwater, wildlife and wildlife habitat prior to considering for approval development proposals with a density greater than one lot per five acres in the North Shore area where the depth to groundwater is eight feet or less.

Although the information and reports submitted with the subdivision application and the proposed conditions and covenants appear to address several specific concerns raised, they fail to address the cumulative impacts of the proposed density and associated facilities in this special area with its many unique qualities.

The Flathead Lakers recognize the challenges the county faces in balancing the public interest with private economic endeavors. But the pace of development now occurring in the Flathead Valley challenges the county to make sure growth, development and economic enterprise can be accommodated in ways that do not degrade or destroy the environmental quality and natural amenities that provide many public benefits and that are the very things attracting growth. The North Shore area is unique in the combination of such benefits it provides and is truly deserving of thoughtful consideration of how to ensure those benefits endure.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Dan Barz', is positioned above the typed name.

Dan Barz
President

Robin Steinkraus
Executive Director

cc: Flathead County Board of Commissioners
Enc.: 500-year floodplain map