

BENZIE COUNTY PLANNING COMMISSION  
FEBRUARY 6, 2008  
MINUTES

PRESENT: Clifford Graves, Mary Pitcher, ~~Kathy Ralston~~, Don Tanner, Mike Moorman, Karen Roberts, Anne Damm, Katherine Ross  
ABSENT: Alan Luedtke, Kathy Ralston  
STAFF PRESENT: Dave Neiger, Director, Craig Seger, Zoning Administrator, Richard Figura, Esq. Planning and Zoning Attorney and Christi Flynn, Recording Secretary  
OTHERS PRESENT: Attorney Joan McKay, Bill Beck, Jed Jaworski, Dan Wagner, Christy Andersen, Mike and Deb Cochran, Amy Ferris, Cathy Demitroff, Marilyn Wareham, Paul Beechcraft

**I. CALL THE MEETING TO ORDER** Chairman Graves called the meeting to order at 7:00 p.m.

**II. APPROVAL OF THE AGENDA** Motion by Moorman seconded by Pitcher to approve the agenda as submitted. Ayes: Pitcher, ~~Ralston~~, Tanner, Moorman, Roberts, Damm, Ross  
Absent: Luedtke, Ralston Nays: None **Motion Carried.**

**III. PUD 08-01 PILGRIM PRESERVE, CRYSTAL LAKE TOWNSHIP, SECTION 16**

A. OPEN THE PUBLIC HEARING Chairman Graves opened the public hearing at 7:03 p.m.

B. INTRODUCTION OF PLANNING COMMISSIONERS-CALL FOR CONFLICT  
None stated

C. STAFF REPORT Craig Seger reviewed written staff report, commenting that M-22 is more than adequate to handle the traffic. He stated the Frankfort Fire Chief has given approval to the plan as revised. He reviewed the section of the Zoning Ordinance that allows the Planning Commission to adjust road standards and commented favorably on the disposition of the contaminated soils. Craig Seger reviewed Sections 17.2, 17.3, 17.2.6.C, which addresses open space (plan shows 52% with 23 clustered dwelling lots), lot size and dimensions. He explained what side yard lot lines are and what the building line is. He explained that the ordinance does allow flag lots and each lot has a buildable area that is 100 feet wide. He explained that the flag lots on the plan are designed to preserve the open space, protect the natural resources and states this design uses the minimum amount of area for utilities and roads. He reviewed the request for relief from the 18' height limitation and setback from ridgelines required by the Crystal Lake Watershed Overlay District. Dick Figura explained that some of the issues pointed out in his letter of Dec. 28, 2007 have been resolved. There was some discussion on the open space as labeled. Attorney McKay explains that the designation of "public open space" is not public, it is privately owned but the owners would have the right to allow the public to use it in some circumstances. There was some discussion on the part of the property that is in dispute. Attorney Figura explains there are a couple of small pieces adjacent to the Plat of Wildwood where there is some error in an old survey. Attorney Figura recommends that if approval is made, to not include those 2 small pieces which will automatically become included when they get title. Doing it the other way would require coming back to the Planning Commission if the land was included and then needed to be removed. Bill Beck, of Pilgrim Preserve LLC, using a power point presentation, showed what was planned for development, where the open space is and describing the parcels that needed consideration with the setback from the ridgeline and height requirements. He explained the procedure for removing the 24th lot and pointed out the area on the western boundary in dispute. He stated he believes the current wording will allow a structure in the

open space that would be compatible with the project. Joan McKay reviewed some of the correspondence regarding the disputed boundary, explaining that the survey shows a marker which is the eastern boundary of Wildwood and then there is a strip 124' long along the corner of Wildwood. She described the history of the Wildwood Plat and the differences in the surveys. Dusty Christensen of Gourdie Fraser explained that by not including the affected land, the PUD would lose 4.6 acres, going from 52% to 51.6% open space. Attorney McKay states that she and Attorney Figura agreed to ask the Planning Commission to approve today and to give them a year to correct the deeds. She states she is sure it won't take that long.

D. OPEN PUBLIC INPUT Chairman Graves opened public input at 7:44 pm and reviewed input policy.

1. PROPONENTS None

2. OPPONENTS None

3. GENERAL STATEMENTS Jed Jaworski, property owner to the north, comments that there was another similar development where the Planning Commission expressed grave concern about traffic safety; also that Golf Lane itself has had some problems with traffic safety because of the slope of the road itself. He asks the developers how they intend to deal with the speed issues on Golf Lane. He also asks if there is ever going to be some resolution on his use of Golf Lane and if the Planning Commission has any ability to determine road grade if he does get access. Amy Ferris wants to go on record with concern about the public accessing into Wildwood from where Golf Lane abuts the Plat. She would like public access cut off as they already have people crossing their property.

4. CORRESPONDENCE

a. A letter received from Paul Wisnewski, MDOT, stating that commercial access would be required and the offset access could be approved as it is safer.

b. A letter from the City of Frankfort stating they don't see any negative impact on service from this development.

c. A letter from Richards Osborne, addressed to Joan McKay which was read aloud as Mr. Osborne requested.

E. CLOSE PUBLIC INPUT 7:58

F. BOARD DISCUSSION Cliff Graves reviewed letter from Attorney McKay summarizing the January 2, 2008 public hearing. Tanner comments that structures in the open space need to be described in the open space documents. There was considerable discussion on the driveway locations with support for shared driveways and questions on why some of the lots didn't have shared drives. There was discussion on the setback from the ridgelines. Tanner comments that he doesn't feel that a plan that starts out with asking for variations from the ordinance is a good plan. There was discussion on whether to approve the adjustments or to send to the ZBA for a determination. Graves asks if the letter from Gourdie Fraser on the culvert that goes under Golf Lane needs to be a condition. Seger states the stormwater plan meets the ordinance, the letter is just clarification. Graves asks if revised engineered drawings have been submitted. Craig states the site documents are in, the new road plans are in the packet and they are consistent with what Attorney McKay wrote in her letter. It was stated we have the fire dept. letter. There was discussion on the road width and clearing height. There was discussion on revising the master deed. There was more discussion on the disputed land. Seger adds that the revisions were presented to the pc, and it is important that what is filed is what we have approved. Figura states he feels that it's easier administratively to approve without the 2 small parcels. Then upon proof of title of those 2 parcels would be added to the site. He explains that if the parcels were included and if title isn't cleared the Planning Commission might not remember and it could cause problems later. McKay comments they are giving ownership of the parcel to a conservation entity with conservation restrictions not just an easement. She requests approving the quit claim with the

language as is. There was more discussion that the open space ownership will be in a 3<sup>rd</sup> party. More discussion that the property descriptions are important. It was decided that the open space will include a legal description and is to be deeded in compliance with the ordinance and reviewed and approved by the county atty. There was considerable discussion on structure(s) that would be allowed in the open space. Attorney McKay read from the quit claim deed the paragraphs that protect the property. Graves has a problem with #6, which gives the owner(s) the ability to construct a structure. Attorney McKay offered that there might possibly be a gazebo or storage structure but that dwellings will be prohibited. She stated that the ordinance requires “essential undeveloped, not totally and that it allows for maintenance of the land which would require storage of equipment to maintain the land. Attorney Figura comments that the ordinance definition of structure is very broad and if you don’t want structures, say you don’t want them. If you want to allow some, you may want to go into more detail. He doesn’t think the intent was to allow dwellings, but to allow some structures. Seger suggests not allowing side walls. Graves doesn’t feel the quit claim as presented is totally consistent with the open space. Tanner doesn’t think the open space should have structures. Roberts suggests crossing out the word “condition”. Roberts wouldn’t mind a gazebo but wouldn’t like a storage building. Disc on the difference of “open space” as something open to the site. Neiger there isn’t a place for a storage/maintenance building. Maybe there could be a place on the site plan for it? Attorney McKay comments that the purpose was the conservancy couldn’t put up a structure without the approval of the design committee. Figura, it could be in the language that construction of a structure would come back to the Planning Commission for approval. There was discussion on what could happen if the ordinance became more restrictive. Seger suggests that the ordinance be followed for required signage and suggests a 25 mph limit on the road. Amy Ferris asks if the new Master Deed will require that the new owners maintain the road all the way back. Mr. Beck states the building was only proposed to allow people to get in from the rain. Graves asks for an amendment of #6. Bill Beck – the building was only proposed in case people needed to get in from the rain. Graves asks for an amendment of #6 of the quit claim deed. Attorney Figura states if the intent in the motion is clear then the quit claim deed can be fit to match. There was discussion that the master deed shall provide that the open space shall be used as conservation open space and no structures of any kind will be allowed. Craig Seger suggests that signage be placed at the spur for a maximum speed of 25 mph and that at the “y” it be indicated that private property is so many feet ahead, and a sign be placed at the property line that it is private property by the applicant. Dave Neiger suggests adding “and site plans” to the approval.

G. DECISION **Motion** by Roberts seconded by Pitcher to approve Case PUD 08-01, Pilgrim Preserve, with its final site plans, for a Planned Unit Development located at the former Frankfort Golf Course, Section 16, Crystal lake Township based on the facts of the case and that the standards of the Zoning Ordinance have been met, subject to the following conditions: (1) Open Space shall be legally described in the quit claim deed, excluding the disputed acreage on the eastern edge of the project, and shall be placed in an irrevocable conservation easement, as provided by the Ordinance and approved by the County Attorney (2) One-way road standards shall be as follows: A thirty three (33) foot right of way, improved road surface width of 12 feet, a Bituminous surface, five 9 foot x 50 foot bumpouts as shown on the revised site plan, a 1.5 foot raised bituminous edge and a grade of no more than 10% unless approved by the Fire Chief, (3) That the conservation easement state that there will be no structures constructed in the open space, (4) That the 20 foot building setback from ridge lines is reduced 10% to 18 feet, (5) That the ridgeline 100 foot limit for principal and accessory building height limitations is reduced 10% to 90 feet, (6) That the 18 foot height limit for principal and accessory buildings is increased 10% to 19.8 feet, (7) that speed limit signs be placed along the road and that an informational sign be placed at the junction of Golf Lane and the Plat of Wildwood stating that it is private property beyond that point, and (8) That the

Zoning Administrator shall ensure documents are filed properly to reduce the Pilgrim Preserve from 24 lots to 23 lots within one year of issuing the Special Land Use Permit and to include in the open space description the acreage along the eastern edge of the project once clear title is obtained. Ayes: Clifford Graves, Mary Pitcher, Kathy Ralston, Mike Moorman, Karen Roberts, Anne Damm, Katherine Ross. Nay: Tanner Absent: Alan Luedtke, Kathy Ralston **Motion Carried**

Pilgrim Preserve Planned Unit Development is approved with Conditions

H. CLOSE PUBLIC HEARING Chairman Graves closed the public hearing at 9:00 p.m.

Chairman Graves called a recess from 9:00 – 9:10 p.m.

#### IV. **PUBLIC HEARING PUD 08-02 REVISION TO INLAND OAKS**

A. Open the Public Hearing Chairman Graves opened the public hearing at 9:10 p.m.

B. Introduction of the Planning Commission and Call for Conflict No conflict stated

C. STAFF REPORT Seger reviewed the last meeting, how this Planned Unit Development was originally approved, how the decision was effected by the Inland Twp. ordinance and how it is now affected by the Benzie County Ordinance. He comments that there could be an improvement to the original submittal in that there would be fewer home sites but the open space would be reduced. He suggests a modification to the amendment that would be closer to what was originally approved. He reviewed the issues of the open space and the number of lots. He suggests that the pc not give up any open space. He comments that the applicant states there are amenities (open space on the north side) that the parcels owners to the south aren't interested in. He suggests reconfiguring the open space to be maintained as 23.9% open space with a reduced number of lots along the road side of the north side. The 10.6 acres would allow 4 homesites and the north side open space would have an agriculture conservation easement or deed restriction. Seger explains it would sever the development and the open space would not be contiguous. He states he is not recommending this, but only presenting as an option to the applicant.

D. APPLICANT PRESENTS Christy Andersen on behalf of Hard Rock Development reads from sentence in the ordinance that says the Planning Commission may approve splitting off the northern half. She also states that any proposal that will increase the open space will not be acceptable. They are willing to limit the development of the 34 acres to 6 parcels keeping just over 15 acres in open space. She describes the future land divisions as four 2.5 acre parcels along the road and a 10 acre parcel in the northeast corner and states anything else is unacceptable. Tanner asks for clarification of the amount of open space. Seger comments that the original plan approved by Inland Township had 12 lots with 23 acres open space on the parcel north of Bronson Lake Road, which is 51% and allowed them the density calculations. Andersen states the Inland Twp Ordinance didn't have calculations; the original plan was just what was submitted.

E. OPEN PUBLIC INPUT 9:27

1. Proponents Mike Cochran, Inland Township and potential buyer states he had requested to buy the property when the development was first proposed and the developer has now come back to them with an offer that they could buy. He states they want the whole half of the original development. They want only the property with the normal building requirements and land divisions. They have to be able to sell some parcels to afford the property. Deb Chocran, Inland Township and potential buyer states she understands Craig's proposal but they need to have the 14+ acres, and they need to have the ability to split the land. She states f they have to be restricted to all of the open space it will kill the deal.

Mary Miller, Inland Township comments that they didn't want the PUD originally either. She adds when it was original the Township understood that it was a 2 part project, and they would like to see the north half not done.

2. Opponents Paul Beechraft, Speaking as a citizen and former planning commissioner and not as Inland Twp. Supervisor, is totally against what they want to do. This was done under the ordinance and the help of Don Swartz. They did it this way, with the extra density, because the school is to the south side and it would be safer. He states the developer hasn't established the water tank and are now saying the fire dept doesn't want it. He doesn't understand that because the fire department did want it for a development just down the road. He continues when this was approved the garden and trails were supposed to be done first and if he had known this would happen he would never had voted for it. Dave Clayson, owner of the south side lots 4 and 5 states the comment made by the developer, that no one wanted the walk around, is not true. There was supposed to have been a meeting but it was canceled. He states he firmly believes that his neighbors don't know what is going on here. When he originally purchased the lots he understood that there was more open space. The developer has not seen through all the things that were planned.

3. GENERAL STATEMENTS None

4. REBUTTAL

a. Opponents Mary Miller asks Christy if she has a copy of the letter that says that the residents were not interested and she would like clarification. Christy read the letter. Paul Beechraft, again speaking as a resident, comments that he thinks there are a lot of things that are over and under shadows here. He states that he believes that one of the conditions were that the trail and garden were to be put in first and he thinks this is just a way for the guy to get out of this. Mr. Clayson states that it is just unfortunate the way this was developed. He states that when he bought his lots the path did have some chips and there were some flowers.

5. CORRESPONDENCE None

F. CLOSE PUBLIC INPUT Chairman Graves closed public input at 9:44 p.m.

G. BOARD DISCUSSION Graves reviewed his handout and comments that the approved site plan plus the minutes of the Inland Township Planning Commission are what in fact approves the Planned Unit Development. He reviewed the status of the conditions originally required and states the number of parcels is grandfathered, but the non development of garden in not in compliance with either the Inland Township or Benzie County ordinances. He adds the recorded Master Deed is not in compliance with the approval and that the development is in violation of its approval on other issues, but that the Zoning Administrator would have to deal with those. He states that if an approval were granted there should be conditions on how to deal with the violations and to protect the open space. Pitcher comments she wouldn't feel comfortable reversing the intent of what they approved back then and we can't reduce the amount of open space. Roberts comments the development is really south of the road and asks if we are willing to lop it off at the roadway? She feels that falls far short of what the ordinance requires. And if it came before us today in this way, we would never approve it. Tanner states it's too bad that it didn't build out as planned, but we don't approve these based on economics. He adds if we approve this it will make it easier for more developers to just come in and say I want out of this, and he agrees with other statements, that Inland Township worked very hard to get this the way they wanted. He states he is not comfortable with pulling it out from under the Township decision. There was more discussion on density and open space. Moorman asks if splitting the north half off will result in financial

harm to the owners on the south side of the property. He states if we approve splitting off the north half we are going against our master plan, and are creating sprawl on the south side. Graves commented that it had been previously suggested that some of the unbought lots could be incorporated into the open space. Ross comments that she has heard in both hearings that the developer is not willing to change the density on the south side. Paul Beechcraft, speaking now as Inland Township Supervisor states credibility is an issue with the Township, and your decision will determine your credibility with us. Health, safety and general welfare of the township have to be considered. Damm comments that she feels that a Planned Unit Development is a compromise between increasing density by requiring more open space. If we approve this it will ruin our credibility and it will encourage others to do this too. The Developer is not willing to give up any lots to regain open space. She sympathizes with their financial position but we can't base a decision only on that. Tanner comments that he thinks finding out that people had not been notified makes a new finding and we need to find out how they feel. There could be other options if they present their opinions. Seger states that one of the technical issues in first staff report is that 25% of the open space must be accessible to the residents, but the Planning Commission could set aside 75% of the open space as a natural area. And 27% now exists as the total of the open space in the south side of the property. He states that all these things should be considered if the applicant chooses to come back with a different proposal. Christy Andersen states, as far as the compromise, that 4 individual driveways on a county road, 4 – 6 homes vs 12, 6 large parcels vs 12 small is enough. She states the Master Deed clearly states possible future development. The master deed does state that the open space is protected. Graves comments that as he understands open space requirements, language needs to be in place that places the open space in a permanently protected situation. He confirmed that meeting was properly noticed.

H. **DECISION Motion** by Pitcher seconded by Moorman to deny the amendment to PUD 08-02 as it does not comply with Inland Township's approval and conditions, which required that the development be built as per the site plan and it would reduce the open space to an amount not allowed by the Inland Township and the Benzie County Zoning Ordinance, and that the application, if granted, would sever the planned unit development, which was approved as an entire development, and the open space would no longer serve the residential development. Graves feels that there would be interest if they came back with a different proposal. Ayes: Pitcher, Ralston, Tanner, Moorman, Roberts, Damm, Ross, Graves Absent: Luedtke, Ralston Nays: None **Motion Carried**. PUD 08-02 Revision to Inland Oaks is denied.

I. **CLOSE PUBLIC HEARINGS** 10:21

V. **PUBLIC INPUT WITHIN PLANNING COMMISSION JURISDICTION** Paul Beechcraft thanked the Commission for denying the application, and thanks the Cochran's for trying.

VI. **ADJOURN** Chairman Graves adjourned the meeting at 10:22 p.m.

Respectfully Submitted:

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Kathy Ralston, Secretary

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Christi Flynn, Recording Secretary

