

LINCOLN COUNTY PLANNING BOARD

Meeting Minutes

September 20, 2011

1. **5:30 – Meeting Called to Order by Chair, Joe Kelly**

Present: Mark Romey, Ted Clarke, Joe Kelly, Matt Bowser, Bonnie Peterson, Paul Tisher, Frank Dierman

Staff: Kristin Smith

Not Present: Dave Johnson,

Public: None

2. **Approval of Minutes from August 16<sup>th</sup>** – *Ted Clarke had a comment on the second page in the minutes under lake shore permit 4<sup>th</sup> paragraph down, that he intended to say “could” rather than “should”. **Ted Clarke** : I wasn’t saying that he should move the whole project back, my thought was that if he could move the patio work back then he is completely outside of the 20ft regulations and we don’t have any reason, any comment from there. He had a question on page 3, 3<sup>rd</sup> paragraph on the bottom. Kristin noted that the problem was that language from Title 85 has to do with navigable water, which is established by the state and Glen Lake, along with many other lakes that the county regulates, is not navigable. Ted Clarke stated that something was missing in the sentence. **Kristin** made a note to clarify. Ted commented on Page 5 that there had been some discussion about multiple use being considered as part of the conservation easement and he did not see it mentioned in the minutes. Bonnie stated that it was somewhere. Kristin noted it was at the bottom of page 4. **Ted:** I guess what I was trying to allude to, is it would be nice if they could considered multiple use, and if we don’t say anything about it here then it isn’t even in the minutes so they won’t even consider it. Kristin read the 3<sup>rd</sup> paragraph from the bottom of page 4. **Ted:** Ok, I guess maybe that does cover it. I just wanted to make sure that they would at least consider multiple use when they look at this Conservation Easement. **Kristin:** I have some updates on that for you. **Ted:** Good, I didn’t have any other comments.*

There was some more discussion about the conservation easement status

**Joe:** Let’s get back to the minutes. Anyone want to make a motion?

**Mark:** I will make one. **Ted Clarke:** I will second it. Motion carried.

3. **Public Comment on Non-Agenda Planning Board Items – NONE**

4. **Agenda**

a. **Lakeshore Permit – Purdy (Glen Lake)**

**Kristin** stated that Joe Purdy thought he was going to be able to make it down, but he called and he isn’t going to.

She then proceeded to present the application and recommendations. **Joe** asked how big the Purdy property was. **Kristin replied:** 2 acres.

**Kristin** mentioned that there was approximately a 9-foot encroachment from the adjacent property to the north owned by the Adams. **Bonnie** stated that that meant 30 feet of waterfront not 39 feet.

**Kristin** noted that some of the neighbors contacted her because the dock was moved to the property and folks wanted to know if he had a permit, if it was legitimate, they were also concerned because of the condition of the dock and it's tied to a tree.

**Joe:** have you seen the dock? **Kristin** stated yes, and proceeded with the presentation showing pictures of the site. She also noted that coincidentally there are a lot of family relations on Glen Lake, [she identified the Spier property which was the next application to review and which was the original location for the dock now placed on the Purdy property.]

**Mark:** so they already moved the dock. **Kristin** stated yes, that these are after-the-fact permits and showed some more images that depicted the relationship of the Purdy property to the Spier property, pointing out the rope that attached Purdy dock to the tree on shore. **Bonnie:** now how wide is that?

**Kristin** noted that the application stated it is 15 feet by 20 feet, but that it appears to be longer than by at least another 10 feet, though she admitted to not having walked out on it to measure it. She then went on to suggest the issues with the two applications in relation to the regulations, specifically with respect to dock size and what constitutes grandfathered activity since the dock was apparently built in 1971, but on a different property.

**Joe** then asked if the application needed a variance since it was less than 40 feet of easement. **Kristin** reminded Joe that there was no regulation requiring a minimum width of frontage or easement on which to place a dock. To which **Joe** said: But you're saying easements have to be 40 foot. **Kristin** again responded that there is nothing in the regulations with that requirement, that it was a completely separate discussion a long ways from be adopted, and that Mr. Purdy's application has to be reviewed under the regulations in place now, which state that docks can be no more than 8' wide.

**Mark** asked when the dock was moved. **Kristin:** we received the application the 22<sup>nd</sup> of August, it was moved probably, mid July, was when we got a complaint about it.

**Bonnie** commented that the frontage that he moved it from was considerably larger than where he moved it to by almost 3 times

There was some speculation as to why the dock was moved.

**Ted Andersen** wanted to know how we would deal with it if he went and bought this dock from somebody on Ponderay Lake, and decided to move it to Glen Lake. Would that make it any different? "I mean he should comply with the current regulations, which in this case even though it was on this lake, he doesn't comply with current regulations, so why would it be any different if he bought it somewhere else, and moved it on the lake?"

**Bonnie** asked if we have any fines or penalties in place for violations? **Kristin** said we do, but that takes follow up, a notice that they have been denied the permit, they have to

remove the item within a certain period of time and if they don't then it gets referred to the County Attorney follow up with charges. She said there is one currently in that state on Bull Lake and potentially another one on Glen Lake.

There ensued some more discussion about what Mr. Purdy intended to do with the dock and the width of the frontage in relation to the dock and appurtenant activities.

**Mark** asked if there could be a variance for docks. **Kristin** stated that a variance can be requested for ANY provisions in the regulations, but there has to be some kind of hardship to warrant granting the variance.

**Mark** asked if the cost could be considered a hardship, for instance if Mr. Purdy had to build his dock now. **Kristin** said no, typically financial hardship is not evaluated. She referred to Page 7 of the regulations and cited the provision addressing variances.

**Kristin** suggested that the width of the dock in relation to the width of the lot begins to create a public nuisance for adjacent property owners when there's that much frontage being used in that way and the lots are so narrow.

**Ted Clarke:** What if Purdy put a condominium on his lot and we have 39 families going down that dock. **Kristin:** I think that is what some of the neighbors are concerned about.

**Ted:** and that's my concern... I can see that happening on that 39 feet and that dock with 10 boats or something sitting out there could become a problem. **Kristin:** I think that is part of your role as the Planning Board, you look at the future and those potentials. **Paul:** Is it better to try and work with him on this dock rather than tell him he can't do it and he do an 8 x 50 dock? Does he have any long term ideas for the stability of this thing? As opposed to tying it to a tree.

There was some discussion about placing conditions affecting number of users, but Kristin noted the difficulty in enforcing that.

**Mark** asked if could be a floating dock? **Kristin** said he is applying for a permit, so that provision [exemption] doesn't apply

**Ted Andersen:** I guess my concern is they took a wide lot and a wide dock, and put that wide dock on a very narrow lot which further restricts the neighbors, and that he moved that wide dock over there without consideration...I am not so sure that that's wise for the neighbors. They have narrow lots too. Are we going to hold those other narrow lot people to a 8x50 dimension, but we don't hold him to the 8x50? Did he think he could be grandfathered? There's definite potential for conflict when someone gets bit by a propeller when they're swimming.

**Kristin** mentioned that applications for permits have been received by the north and south property owners - the Adams and the Gibbons, and that yes, they would have to comply with the 8x50 regulation.

**Ted** asked if the Purdy's had seen the staff report yet? And the recommendation that "only the existing dock is permitted in the new location? **Kristin** said yes.

**Bonnie** suggested that since the dock was built prior to 1976 it couldn't last too much longer. **Ted** asked about the plastic floats. **Kristin** said the application just stated it was larch wood and plastic floats.

**Mark:** I asked this question earlier... if he didn't even move the dock, and he came to us and he said "I have a 39 foot piece of lakefront property and I want a 15x20 dock" what would we do?

**Everyone:** we'd say no

**Mark** made a motion to deny this permit, based on it not being grandfathered and not meeting the standards of being 8 feet wide. **Matt** seconded the motion. **Bonnie** said that means we don't have to explain anything. **Mark** said that any dock that was built at that time was grandfathered, as long as it stayed on that lot.

**Joe:** All in favor. **All:** aye. Motion carried

#### **b. Lakeshore Permit – Spier (Glen Lake)**

Kristin presented the project, reminding the Board of where the project was located and that it was installed without a permit. She commented that you could clearly see the old dock (now on the Purdy's property) in the aerial, and the site photos show the new dock.

There was some discussion about the illusion of the site photos submitted and how the dock appeared to be hovering above the water like a pier. **Joe** questioned whether the owners could legally have the poles. **Kristin** responded yes. **Ted Clarke** said he didn't realize how many loopholes there were.

**Kristin** reminded the Board of the scrutiny we faced updating the regulations and didn't really get a chance to think through all the specific scenarios. **Paul** said there is no way can you figure in all the alternatives.

**Joe** asked how much lake frontage the applicant had. **Kristin** stated it was probably 80 feet or so. **Paul** commented that a lot of what we decide is aesthetic. **Ted** said the applicant had a 15x30 dock and now wants a 15x15 dock with a 10 ft gangplank.

*There was discussion about the grandfather clause.*

**Joe:** I could say they are grandfathered on their old dock, but I would have a hard time saying they are grandfathered on that. **Kristin:** I tend to agree with you because if your going to replace something, that is when it needs to conform. **Joe** went on further to suggest that grandfathering something means it would have had to been built before the regulations existed. "They knew these regulations were going on and they probably built it to beat the regulations."

**Mark** asked how many people do we think don't know about the regulations. **Kristin** suggested that on Glen Lake, given the active participation of property owners, there should be a fair amount of awareness. **Mark** said it's the responsibility of the landowner to check before they do anything like that. He thought half of the gang plank appeared to still be on land, which means the new dock is probably shorter - a good thing.

**Mark:** I don't like the 50 footers, I think they are too far out there.

**Kristin:** that gets me back to the point I want to make, I would rather see something like this, a square platform that is modest and close to shore, than some big long thing that extends out into the water, so in keeping to the 8 ft, I just think that it's something we need to revisit

**Ted:** I don't know if we have a choice not to deny it, they have to meet the regulations and it was built after the regs were approved. If we don't deny it, everyone will jump in there and build whatever they want and then sneak in an application.

*There was some discussion about denying the application.*

**Ted** then suggested requiring the applicant to cut the dock in half which would make it conform. **Ted Andersen** said anytime you move a dock and change and reconstruct something else, it is no longer grandfathered. **Mark** asked why since they're old dock was 15 feet. **Ted** replied, "I live on Savage Lake and I got a cabin that is setting right on the water. If I tear that cabin down and build a new cabin, it isn't grandfathered, it has to conform to the regulations."

**Kristin** noted that that is the standard interpretation for grandfather provisions.

*There was some discussion about grandfathered structures. Kristin read the provisions from the regulations. There was a general preference for the new dock.*

**Paul:** I would make a motion that we deny this dock because it doesn't meet the specifications of our new regs. It's too wide.

*There was some discussion about whether to deny or approve with conditions. Paul's motion failed for lack of second.*

**Kristin** explained that once a permit is issued the applicant has a year to comply with any provisions and complete the work.

**Mark:** if we approve with conditions we are almost telling them how to build their dock.

**Ted:** we are just saying they have to build it according to the performance standards of the current regulations, we aren't telling them how to do it, yet if we give them a year they get to enjoy this dock all next summer the way it is, into next sept and then they will fix it.

**Ted Anderson** moved to deny, recommended denying the request for a permit because it does not meet the current requirements, and does not fall into the grandfather provision.

*There were questions about what the County would do if it was denied. Kristin said they would be issued a letter to remove it.*

**Joe:** so, if we deny them completely and have them reapply, it's another \$100 permit. **Ted Clarke** suggested approving with conditions would be more County-friendly. **Kristin** stated that was her recommendation, which gives the applicant an option and provides some administrative authority without jumping right to the violations. Essentially, allowing for that corrective action prior to going to the next level. **Ted Clarke** asked if the condition could be added that the dock has to be modified to meet the regulations by June 31<sup>st</sup>?

**Kristin:** you bet. If you're going to go down that road, then Ted Andersen needs to rescind his motion. **Ted:** I will rescind my motion

**Ted Clarke** moved to recommend approval with the condition that the dock be resized to conform to the performance standards of the current lakeshore protection regulations which are a minimum of 8 ft wide by 50 feet long. It must be completed by June 30<sup>th</sup> 2012.

[Somebody] seconded it. Seven in favor, one opposed. Motion carried

**c. Continue discussion of proposed language change to Lakeshore Regulations re: easement holders and other provisions**

**Joe** began by stating that he did not want to introduce this item because it would be “cutting his own throat” **Kristin** summarized the discussion from the previous month, which is what was reflected in the new draft. Mostly, that there was a strong sense that the County did not have any authority to grant any kind of permits or easements because it was on someone else’s property. That there may be some liability there.

*The conversation moved to “multiple easement holder.” **Joe** gave an example of his understanding of a situation with his property on Crystal Lake. **Kristin** commented that she looked into that and could not find any reference to easements from researched deeds and plats, which she presented. She then explained that common area deeded to homeowners is very different than easements granted to individuals or multiple parties.*

*The Board revisited the Steed issue and the 6’ easement for a dock from earlier in the summer and all the reasons the County denied the permit: inadequacy, liability, and nuisance.*

**Mark** retold the situation with the Steed easement and how lots were sold to several parties with access to the easement without having waterfront lots. **Joe** noted there may be a lot of easements we may not even know about. He suggested they had already approved one for Mike Monroe behind Crystal Lake. **Kristin** corrected the record to note that in fact that subdivision [Lavon Estates] did not have an easement, but rather a common area deeded to the property owners.

*There was discussion about the two different parts of the proposed language change.*

**Kristin:** And if I could just refresh your memory, on your discussion for the Carter issue, which was “this easement is insufficient and it was too much of a burden”, you specifically said “we don’t even want to deal with this anymore, not all easements are created equal, just because you have an easement doesn’t mean its going to meet regulatory requirements that’s necessary”

*There was discussion about having multiple easement holders all having to sign the application and about whether easements should be a minimum width in order to apply for a permit and what width and why. Questions raised were how do you determine the threshold for a public nuisance?*

**Ted Clarke** suggested a case by case basis and what that means whether it’s legally defensible.

**Kristin** identified the potential problem with case-by-case decision making and that the County needed to be on sure ground as to what defines it, otherwise the claim that a decision is arbitrary has merit. She referred to the lack of standards in the original regulations from 1976 and how that led to arbitrary decisions. She also noted that during the previous two agenda items, the Board was insistent that each case be made to comply with the regulations.

*There was some discussion about what an easement may say or allow.*

**Kristin** reminded the Board that just because an easement says something does not mean it trumps the County regulatory authority.

**Bonnie** noted that if a property owner didn't want a dock on an easement and didn't intend an easement to be able to have a dock the County shouldn't have the ability to override the property owner in favor of the easement people.

**Kristin** said she would like to contact the City of Whitefish to see how it has been working for them since it is the exact language from their regulations and is what was originally suggested by the Board to look at – in terms of the first part of the change.

*There were several comments of surprise that it was Whitefish language.*

**Joe** suggested the first part should be re-worded to allow easement holders to apply for permits.

*There was some more discussion on whether to limit applications to easement of a certain width, such as 30 or 40 feet, and how far a dock had to be from the property line and how that would affect narrow lots.*

**Someone** asked if any changes had to go back through public review, to which **Kristin** replied, "of course!"

**Kristin** commented that the Board may want to consider dock frontage to be a percentage of lakeshore frontage to allow for flexibility and so there are not docks that are wider than they are long.

**Mark** asked about why there were limitations on the size of floating docks and **Kristin** commented that they are treated the same as other docks with the exception of floating docks of a certain size – 8x25 which do not currently require a permit – a provision she recommends removing from the regulations as it may not be consistent with state law which says that all docks must be reviewed.

*There was more discussion about setbacks.* **Joe** asked what the requirement was.

**Kristin** reminded the Board there is no zoning in Lincoln County and therefore no required setbacks enforced through any other regulations, only a suggested distance of 10ft, but unenforceable.

*There was general consensus to have the edge of a dock no closer than 10ft to a property line.*

*More discussion on defining a floating dock.* **Kristin** noted that generally a dock that is not anchored to shore, but rather to the lakebed itself is considered floating.

*The discussion then moved to changing the dock dimensions to a maximum square footage.* **Kristin** noted the benefit of that in terms of flexibility and with the other

provisions like proximity from side lot lines it establishes some boundaries. **Ted** liked the idea and **Paul** noted that there were all kind of loopholes to look out for.

**Ted** asked when the regulations had to be reviewed. **Kristin** stated they could be modified anytime.

**Paul** asked if it was common for lakeshore regulations to define the dock measurements as 8 x 50. **Kristin** stated yes, it was frequently used, particularly by Montana counties, but other places have square footage maximums, like Wisconsin and Minnesota. **Bonnie** said Alaska is 8 ft by the length.

**Ted Clarke** wanted to make sure that if the regulations were going to change to allow for square footage of a dock, then the Spiers need to know that so they don't make the change and then find out it would have been okay if they'd waited. **Kristin** said she would let them know that the Board is considering that change. **Mark** asked if they could request an extension. **Kristin** said yes. **Mark:** what are other counties doing?

**d. Continue review of Stimson Conservation Easement Area (preliminary)**

**Kristin** presented additional information from Stimson. She commented that Stimson had been at the Commissioners at the beginning of the month and she was not aware ahead of time otherwise she would have let the Board know. She announced that FWP and Stimson/TPL will be having public scoping meetings, which will be announced in the paper, October 3<sup>rd</sup> in Libby at First Montana Bank and October 4<sup>th</sup> at the Troy High School, 5-7:30 for both evenings. Also, she noted that they are scheduled for the October Planning Board agenda to give an update on their progress.

*There was some discussion about the handouts that Kristin had forwarded with respect to the status of the easement process to date and some of the items addressed, such as mineral rights and access.*

**Paul** noted that the public meetings were a good opportunity for folks to voice their concerns about things like access.

**5. Planning Department Report**

**Kristin** updated the Board on the Borden/Davidson Lakeshore Permit on Middle Thompson Lake. She spoke with Mr. Borden, the contractor following the Board's recommendation to deny the permit and he withdrew the application so it was never presented to the commissioners.

**6. Planning Board Comments and Questions**

**Joe** asked if everybody received the new travel form that **Kristin** sent out. He challenged her on the reimbursement amount. **Bonnie** stated that she would not be requesting any reimbursement from the County.

**7. Next Meeting – October 18<sup>th</sup>**

**8. 8:00 – Meeting Adjourned**