

# LINCOLN COUNTY PLANNING BOARD

## Meeting Minutes

October 18, 2011

### 1. 5:35 – Meeting Called To Order By Board Chair

Present: *Mark Romey, Ted Clarke, Dave Johnson, Joe Kelly (for 25 minutes), Matt Bowser, Bonnie Peterson*

Staff: *Kristin Smith*

Not Present: *Paul Tisher*

Public: *Representatives from Stimson Lumber, Trust for Public Lands (TPL), and MT FWP, Jim Sieffert, Steve Prieve*

### 2. Approval Of Minutes – NONE READY

### 3. Public Comment On Non-Agenda Planning Board Items

### 4. Agenda

#### a. Continue review of Stimson Conservation Easement Area (preliminary)

**Robert Rasmussen** with TPL presented an update of the process of developing the easement. They are just starting work on drafting the language. The easement would restrict subdivision and development of the property, but would provide for on-going forest management and limited access as governed by the landowner. He outlined the funding sources for the project. He suggested that by this time next year the project would be finalized. They are in the process of soliciting public comment. Had a couple of scoping meetings and have presented to Libby City Council and Troy City Council.

**Alan Wood** spoke about FWP's involvement in the project and their role to facilitate the public process as authorized by the FWP Commission. Identify issues/concerns up front to build into design of easement. Now's the time to provide input. Most people are supportive of easement. Concerns expressed about limited developable private land in Lincoln County. Made a comparison to the Thompson Fisher easement with Plum Creek from several year's earlier. He noted that folks at the public meeting in Troy who live next to isolated pieces of Stimson want to keep it that way rather than see it developed.

Mark asked Barry Dexter what Stimson gets out of the deal. Barry responded that the company would receive one payment to give up the development rights on the property. Most mineral rights have already been severed. Mark asked about taxes, and Barry confirmed they would continue to pay taxes.

A lot of roads closed for management reasons – impacts to important fisheries. This year they've opened Ruby Loop as a test. The road system has been closed year-round since 2008. Costs excessive to maintain, access causes a lot of problems as number of people using it increases during wet seasons. **Alan** – it's important for FWP to secure right of public access with same rules for everybody, as opposed to

now, Stimson can give certain groups access to roads. Foot access will be guaranteed but road access limited to what Stimson willing to allow. **Bonnie** noted that the easement goes a long way to protecting native Montana fish and supports it.

**Jim Sieffert** handed out maps and spoke about trying to get access from Kootenai Falls to Troy on north side of river. Would like to develop trailhead for 3-mile loop. People use it now- good tread. Economic development is key to long-term health of community. Access is a problem. He and his friends went to shooting range and cleared a foot path out of an old logging road. Would like conservation easement to incorporate it because the trail weaves in and out of Stimson land through Lynx Creek Flats. It is part of the old David Thompson historic trail. Wants to be able to market loop to folks with sign, but **Darryl** [Stimson rep] said no. **Matt** asked him to identify what colors represent on map. **Jim** said green is Forest Service, blue is state and yellow is Stimson.

**Ted Clarke** asked if he was working with a club or a group. He's 100% behind it and hopes Stimson would be receptive.

**Jim** said they could get a group, but that usually you call up friends and "just go do it." They didn't go ask the state because there's a road there.

**Dave Johnson** noted that recreation is what Lincoln County's got going for it and he strongly supports the effort. Should be a cooperative effort to develop recreation opportunities. Everybody benefits with the easement.

**Barry** noted that he did know enough to comment very much, but that the easement is intended to deal with these kinds of things and encourages folks to talk to Darryl and he would also. He mentioned that their biggest concern is liability if someone hurts themselves on their easement. **Mark** asked how liability on open roads was any different. **Barry** stated that drivers take the risk on themselves. **Alan** thought it would likely fall under the same statutes as hunting on Block Management lands, which Stimson participates in. If free and voluntary access – no fee – hunters enter the property at their own risk. He will consult with state legal counsel.

**Matt** echoed exploring recreation opportunities is great idea. Great views. Having worked for government a lot on trail and with historic nature of trail the Forest Service archaeologist should be consulted. Recommends talking with them sooner.

**Mark** noted the tribe would have a lot of say in it also.

**Steve Prieve** commented further about access across O'Brien Creek and signs posting "end of County Road". Wanted to know if Stimson can grant easements across other private easements to Forest Service land?

**Barry** stated that the devil was in the details. Each existing easement would have to be reviewed.

**Alan** noted that road easements grant rights and conservation easements restrict rights. Any pre-existing easements have to be honored.

**Ted Clarke** lamented that road closures and access in general around the County is very important to people since there is so much public land and the grizzly habitat has influenced management so much. If clubs/groups come forward to adopt/maintain roads on a voluntary basis and assume liability then could be win-win and if the groups don't do what their supposed to then Stimson can shut it down.

**Barry** is open to ideas and wants to be good neighbors. They understand the concern. He hopes that the state's interpretation of access and liability helps solve the liability concern.

**Steve Prieve** thought if a dialogue between other property owners who are near Stimson parcels and Stimson could happen to ensure public access if landlocked. He suggested posing to the private landowners: Are you willing to trade public access knowing it will never be developed?

**Alan** noted the one surrounded Stimson parcel had a County road adjacent to it so there would be public access. **Bonnie** commented that that way some people are not getting more benefit of easement than others.

**Alan** stated that by enrolling in Block Management, a property owner gets the benefit of having FWP enforce the property owner's rules.

**Dave** (*acting Chair*) asked for any more comments.

**Matt** offered one final point. He said he thought the conservation easement "fit" and appreciated Stimson being open to discussing all forms of access. It's a good sign for big picture to just be focused on the details.

**Robert** stated that they'll keep working on it and the easement will come before the Board for formal comment.

**Ted Clarke** asked if Stimson had to go through this public process.

**Alan** stated that because of the federal funds to assist in the transaction, the state was bound by its MEPA process.

**Dave** expressed appreciation for Stimson to come and speak with them.

**b. Review proposed language change to Lakeshore Regulations re: easement holders.**

Kristin presented the changes that the Board discussed last month and conveyed the conversation she had had with the City of Whitefish planning staff and one of the long-time board members of their lakeshore protection committee. Both folks told her that the language that the Board had instructed her to first start with had been on the books in Whitefish since the regulations were adopted – sometime in the early '80s and had never been challenged.

**Dave** confirmed that it was the section that was now crossed out in the draft that was what Whitefish had been using. **Kristin** stated yes the provision that easement holders do not have the right to apply for a permit. She also noted that their practice is to require the landowner signature on all applications. She thought that's where the original discussions had been going, but we seem to have gotten off track. She noted that the original recommendation is certainly cleaner and easier to administer if the landowner signature is required.

She also noted that Whitefish's language only allows one dock per property, which would remove the need for some kind of easement width requirement. They also have a provision addressing distance of dock from a property line, requiring it to be in the middle of the lot.

**Ted Clarke** asked where the 40' came from for an easement width. Kristin noted that was just thrown out for discussion purposes. Matt thought it was for safety.

*There was some discussion about all that's involved with a dock and a boat and navigation around that dock and how 40' could easily be consumed, but who would grant such an easement?*

**Mark** asked if the 6' Carter easement was an anomaly and Kristin she thought it was.

*There was general consensus about trying to keep it simple and requiring the landowner's consent to the application.*

Kristin noted that way each application can be reviewed according to the regulations so it doesn't matter how many easement holders there are or how wide the easement is. But, that means, without other adding other regulatory provisions (i.e., one dock per property) then we'll see applications (if the property owner signs it) like the Steed/Carter issue where the owner had a dock and the easement holder wants a dock and we'd have to determine whether two docks on the property is appropriate.

*There was some discussion about why anyone would grant a 30 or 40 foot easement on their 100 foot lot.*

**Kristin** recommended going back to the language originally discussed (i.e., from Whitefish) and adding a provision about the landowner's consent.

*There was some discussion about easement rights and how we can't take it away, but can control its use.*

**Kristin** mentioned the Steed/Carter case again – the Carter's attorney argued that there was nothing in the Lakeshore Regulations that prevented the easement holders from applying for a permit to exercise their right. Which is why the County reviewed the application in the first place. Again, having the right doesn't mean you get to do what you want on someone else's property. She noted that now, if we require the landowner's consent, we shouldn't run into the problem.

**Matt** suggested turning the statement positive – he made a **motion** to state:

*"Easement holders may apply for a Lakeshore Construction Permit to perform work within the Lakeshore Protection Zone with the approval of the property owner"*

**Bonnie** asked if there was some kind of grandfather provision. **Kristin** noted that anything existing on the ground prior to a change in regulation is grandfathered. It's only a change in activity that triggers the need for a new permit.

**Matt** also suggested keeping the 40 foot width in for now.

Ted Clarke seconded the motion.

All in favor – **motion passed.**

**Ted Clarke** asked if there was any urgency to have a public hearing on it and Kristin said no, all changes should be done at one time.

*There was general consensus that it was a good change.*

**Mark** suggested waiting until next time to take up the rest of the proposed changes and include talking about square footage.

### **c. Lakeshore Permit – Morrill (Crystal Lake)**

**Kristin** presented the project for which Mr. Morrill is applying. He is interested in placing four concrete posts to support the small platform next to his dock.

**Dave** and others thought the whole project was a little questionable because of the aesthetics and condition of the dock next to the very nice dock. He said since the piers wouldn't be visible it seemed innocuous enough.

**Ted Clarke moved** to accept the planning staff recommendations.

**Kristin** wasn't sure how the posts would be placed. The application states that a Kubota will place them and no digging would occur in the lake.

**Dave** said the conditions of approval pretty much have the necessary requirements.

**Mark** seconded the motion.

All in favor. **Motion passed.**

## 5. **Planning Department Report**

**Kristin** updated the Board on the last two lakeshore applications. The commissioners followed the Board's recommendations. Mr. Purdy has submitted a new application AFTER he already made the changes, though – again. He cut the old dock in half. That will be on the next agenda.

She also noted that she let the Spiers know that the Board may be looking at changing the regulations in the near future and so they didn't have to hurry to make the permitted change.

**Mark** asked about the status of the lawsuit over Glen Lake being in our regulations. Kristin stated that the County hadn't been served yet.

**Kristin** also notified the Board that the Wilderness Club, which was reviewed before the Board started reviewing subdivisions, had new owners and was looking at redesigning aspects of the project.

## 6. **Planning Board Comments And Questions – None**

## 7. **Next Meeting:**

*November 15<sup>th</sup>*

## 8. **Meeting Adjourned**