

LINCOLN COUNTY PLANNING BOARD

Meeting Minutes

August 20, 2013

1. MEETING CALLED TO ORDER BY KRISTIN

Present: *Josh Letcher, John Rios, Bonny Peterson (late), Matt Bowser, Paul Tisher, Mark Romey*

Absent: *John Damon, Kirsten Holland*

Staff: *Kristin Smith*

Public: *Bill Giese, Buck Schermerhorn, Ed Burton*

2. APPROVAL OF MINUTES FROM JUNE 18TH

No changes to minutes; stand approved

3. PUBLIC COMMENT ON NON-AGENDA PLANNING BOARD ITEMS - NONE

4. AGENDA

a. Giese Lakeshore Construction Permit (Tetrault Lake) – Re-review

Kristin refreshed the Board of their review of the proposal in June which neither the applicant nor their representative had attended. The Board had recommended denial of the permit. The applicant's representative submitted additional information prior to the Commissioner's meeting. The Commissioners, rather than making a decision, asked that the Board review it again with the proposed changes from the applicant.

She reported that based on the Lakeshore Protection Regulations guidelines for review the majority of the application could not be supported. She recommended approval for a portion of the project – Phase I, with modifications.

Bill Giese introduced himself and presented his proposal, the history of the property and lake. He noted the bulrushes, loons and grebes nested in the wetland area in the southwest of the property and that is why he abandoned is planned Phase III. He suggested the continuity of a wall on his property and the neighbor's property would provide a uniform style rather than having a bunch of different walls.

Buck spoke about the different rock wall projects around the lake and how this project would not be a nuisance, rather it would be adding land to his property for more usability. He also talked about the fluctuations of the lake and the difficulty in ascertaining the ordinary high water mark.

Bonny asked how Buck came to the ordinary high water mark. Buck reiterated that it was a combination of data.

Bonny asked about construction of the rock walls. Buck stated his techniques using fabric behind the rocks to avoid seepage of the sand from the hill.

Paul asked about the lakes in the area and noted the different vegetation. Buck produced some of the notations about lake levels that one of the neighbors had produced over the years.

Bill said he wanted to stop the erosion that he had seen over the few years that he had been there.

John R. asked about the other properties that have similar rock terraced walls. Buck provided some descriptions. Kristin commented that Tetrault Lake had not been subject the Lakeshore Regulations in the past.

Bonny asked about the properties that were threatened by rising water. Bill said they were near the boat launch. Bonny said that was not unusual since they were built closer to shore.

Bonny said she was having a hard time with the application. She said she supported the FWP comments that hardening the lakeshore does not protect water quality or fisheries and that she thought other property owners were waiting to see how this application played out because if this application was approved to put a wall at the high water mark then it would be a domino effect back to the boat launch.

She said having the hard rock line will take away from the scenic values of the lake.

Bill said he just wanted to establish an area to sit and enjoy the lake and it was not going to take up all of his shoreline. He suggested there was some confusion about the different properties in the first application. Kristin noted that it was clear which lot was proposed for different projects.

Mark asked Kristin to provide some background on the provisions in the Lakeshore Regulations that restrict walls to areas of active erosion.

Kristin summarized the research that was conducted when the regulations were being modified a few years ago and that several studies suggest the use of walls in active erosion areas only as a best management practice in order to maintain a healthy shoreline for aquatic vegetation and fisheries; as well as to prevent additional erosion. She commented that the County had looked to other jurisdictions both in and out of Montana for guidance and adopted regulations consistent with those of neighboring counties.

She stated that the reason she supported Phase I in this case was based on the applicants suggestion that the neighboring property is planning on proposing a wall along his shore where active erosion appears to be occurring based on the photos provided.

Mark asked for clarification on the drawings [visually indicated by applicant and representative].

Bill commented that the first couple of railroad ties used as steps had to be re-established because of the water level coming up last year.

Bonny wanted clarification on the trees and whether they would be removed.

Buck stated that they were planning on planting shrubs to support the soils adjacent to the wall.

Matt asked if the neighbor had seen the water higher than it had been last year. Bill thought perhaps once before. Kristin read from the neighbors comments, in which he stated that the water had never been that high.

Paul asked about the size of rock. Buck stated approximately 16”.

There was some questions about the existing walls and such around the lake and how they were permitted. Kristin commented that lakeshore activity on Tetrault lake had not been regulated previously.

Bonny asked Kristin why she did not recommend Phase II.

Kristin read from the policy considerations which states that there must be active erosion. She stated that there was no evidence of active in erosion in the location of Phase II.

Bill asked if Kristin had taken into consideration the stairs.

Kristin stated no, since that was only just mentioned and not included in the application.

Mark said he understands why Phase I should be recommended but not Phase II and suggested moving the rock down so there was less excavation.

Matt agreed.

There was some discussion about where the wall should be [several people talking].

Kristin said she thought the point was that the project itself was actually going to create a situation where erosion would begin to occur.

There was some discussion about the ordinary high water mark and how it is established [several people talking].

Bonny asked about the length of the wall.

Buck clarified that the new drawing still had the wrong length and it will not be 50 feet and that the wall would be set back from the high water mark so that it would not interfere with lakeshore.

He stated that the first of the tiered walls would be set back from where the canoes are depicted in the photo. He said there would be good retention so that the sand hill would not slough into the lake.

Josh asked how the wall would prevent erosion.

Buck said it would not. The intent was to keep it back as much as possible.

Paul said it seemed that everyone liked the first wall on Phase I but not the second.

Bonny asked why it could not just be built with the first wall.

Kristin explained that there two different approaches. The wall as proposed is as far away from the highest water mark as possible, but requires the second wall for stability since the distance requires cutting into the hill. The second alternative would be to bring the wall farther down the hill, and have only one, but that would place the wall nearer the water’s edge, thereby hardening it, which is contrary to the regulatory considerations.

Buck said they might be able to get a 6-foot wide area with a 5-foot wide wall farther down the hill.

Paul asked if Bill was concerned about a place to sit.

Bill said he just wanted to protect the property. He wanted to know if he could re-apply in the future.

Paul asked for a motion.

Mark said he cannot see any reason for doing the project. He said walls just invite problems because people always want to add or re-build it. **He moved to accept Kristin's recommendations for approval of Phase I and denial of Phase II.**

Matt seconded.

Kristin said there was conflicting information between the presence of active erosion and the location of the high water mark.

Bonny said she could live with a Phase II with only one wall.

Paul said if that was the case then it would be a stronger case for erosion control than just aesthetics.

John R. said the future application could demonstrate the need if there is in fact continued erosion.

Kristin asked Buck where the photo depicting the eroding bank was in relation to the property line. Buck said approximately 200 feet.

Bill said another tree fell over between his property and Leonard's this past year.

Buck suggested a field trip.

Paul called for the question. The motion passed 3-2.

b. Burton Lakeshore Construction Permit (Bull Lake) – *project completion different from approval*

Kristin noted that this project was reviewed and approved in June and the applicant submitted his letter of completion. However, she brought it back to the Board's attention because the work completed was different from what was approved.

Mr. Burton suggested that an animal, *nutria*, was tunneling around the property and the ground was mostly peat-like material now with numerous holes.

Bonny said she was familiar with them, but had contacted the game warden and said there had not been any in the county.

Mr. Burton said he added the rock to secure the shore.

Paul asked what the approval was for. Kristin stated it was for the deck only.

John R. asked about what was holding the rock in place. Mr. Burton said it was just a piece of plywood holding back the rock.

Matt asked about the distance between the water and the plywood.

Paul said based on what he was seeing it is not something the Board would have approved. He said the shrubs were probably fine, but that from the shrubs to the water would need to be remediated.

Matt suggested more shrubs behind the plywood and in front of the plywood near the water as much as possible to support and stabilize the shore. Once the shrubs are established the wall is unnecessary.

John R. said the problem with the project to begin with was seeking a permit after the fact and here it is again, after the fact.

Bonny moved to have the applicant remove gravel between shrubs and plywood wall, and plant native vegetation in area between shrubs and water. Mark made a friendly amendment to add vegetation to the bare ground on the north side of the deck.

There was some discussion on the channel and Mr. Burton asked if he could add some material to the north.

Kristin said that that would require a separate application and the floodplain administrator would have some requirements.

Josh seconded the motion.

Motion passed unanimously.

- c. **Collect “homework” (again)** – Kristin had received some comments from a majority of folks, but not everyone. Kristin said what she had received so far was very similar so that it will be easy to put together a summary of suggestions once everyone gets their thoughts to her.

Bonny asked whether the regulations would apply to the towns.

Kristin said, other than the City of Libby, which has its own zoning and subdivision regulations, the other communities do typically use the county regulations for their review.

- d. **Review recommended changes to Lakeshore Regulations**

Kristin talked about the memo she had distributed prior to the meeting. (She corrected the date that was on the memo, which should have read 2013, not 2011). She stated the memo was a compilation of several meetings the Board had in 2011 as well as the most recent discussion the Board had. Specifically, it included provisions addressing easements, docks and a few other things that the Board sought to address.

Paul suggested the ordinary high water mark needed to be addressed as well as walls.

Mark said no one collects the data.

Kristin said that was why the county adopted the language it did since it specifically talks about vegetation, which is something that provides the most reliable information.

Kristin suggested not making any changes to either of these sections in the regulations.

The discussion turned to enforcement and fines.

Kristin said the only hard stick if someone does not comply is action by the county attorney. She said the commissioners did not adopt after-the-fact fines when it adopted the updated regulations even though it was a recommendation from staff.

The Board agreed these should be added now, since it was not fair to those who do it correctly.

Kristin said there were a couple items brought up at the last meeting that did not make it into the memo, which were notification of adjacent property owners and spacing between docks.

There was more discussion about docks; spacing, size, number and slips. Everyone still concurred with the draft recommendations.

There was more discussion about the easement provisions. Kristin related another situation that had come up regarding an easement granted to multiple parties, so she recommended adding some provisions about

Josh asked about how the spacing from property lines would impact the easement requirements

There was some discussion on various configurations and scenarios, but no alternative emerged.

Bonny moved to accept the proposed recommendations and add a section on fines and spacing of docks at 40 feet. John R. seconded. Motion passed unanimously.

5. PLANNING DEPARTMENT REPORT

Kristin stated there was a major subdivision in review in Libby near Panoramic View estates. She also informed the board that the county had been sued for approving the Sophie Lake RV Park.

6. PLANNING BOARD COMMENTS AND QUESTIONS

Bonny said she had talked to people about multiple RVs and specifically Kiowa Hill. She said some of the RV owners had roped off the cul-de-sac and had brought more campers in hidden around the property so they are not visible. She said the septic effluent was leeching into the neighboring property. She said she had not seen it, but was told by someone.

Kristin said that was a public health violation and the Environmental Health Department needs to be notified.

Bonny wanted to know how the county would have ever known if she hadn't talked to that person.

Kristin said the only way the County knows about potential violation is by people complaining and bringing things to our attention. She said the Planning and Environmental departments work together on tackling the list of complaints.

[multiple people talking]

Kristin said they do get complaints from people that are just complaining and once we follow up on something, the facts are not necessarily what the complainant thought.

Josh asked who decides speed limits on county roads. Kristin said state law spells out how a county can change speed limits.

Matt asked if the Board could get print-outs at the meeting if materials were going to be e-mailed instead of mailed. He appreciated the cost savings, but said it was nice to have a hard copy. Kristin said of course.

John R. said he would complete his homework and wanted to know if there was anything else he should look at.

Kristin said the packet of other jurisdictions was a good start and to think about the projects that we've reviewed also.

Paul thanked everyone for coming since a quorum was needed.

Bonny stated she might not be at next month's meeting because she was expecting a grandbaby.

7. NEXT MEETING: **September 17th**
8. **8:00 – Meeting Adjourned**