

LINCOLN COUNTY PLANNING BOARD
Meeting Minutes | August 17, 2010

1. **Meeting called to order by Board President: 5:35pm**

In Attendance: Dave Johnson (DJ), Ted Clarke (TC), Joe Kelly (JK), Kristin Smith (KS), Lisa Oedewaldt (LO), Mark Romey (MR), Paul Tisher (PT), Ted Andersen (TA), Stew Briskin, (SB)

Not in Attendance: Charlie Newton (CN), Heather Carvey (HC)

Public Attendance: See Attached Sign-In Sheet

2. **Approval of July 20th 2010 Minutes**

TC asked for the correction within the Hurricane Ranch review to add “at the end of the week” to the sentence about the county garbage bins getting full. PT made the motion to approve with changes. TC seconded the motion. Minutes were approved.

3. **Public comment: Non-Agenda Planning Board Items – None**

4. **Agenda**

a. **Update from Natural Resources Committee**

Chas Vincent (CV) came to speak on the progress of the resource plan. CV talked about the public meetings held in the 3 areas of Libby, Troy & Eureka and that there was good turnout to see what was going on and some interest to come back out. All information is going to be available in digital and hard copy. One of the members is no longer on the committee due to health reasons but is willing to get info to the committee to share with them by donating items to the museum, and give access to all the members to review and use. No date has been nailed down but it is coming before December 2010. PT confirmed the December date for them to read. CV said yes there will be info by then. TA asked how the info would be condensed. CV said long narratives and other professionals, such as Jeff Grueber, has methodology on how to approach such large information. JK addressed the public in attendance and said that the Natural Resource Plan (NRP) will be under the Growth Policy (GP) and will be reviewed per statute.

b. **Revisions to Lakeshore Protection Regulations**

JK opened up the discussion by stating the rules to keeping the meeting in an orderly manner; giving 3-5 minutes to express view and not to argue with others. He then handed the meeting to Kristin for the staff report. KS gave a brief presentation summarizing the history of the regulations and the recommended revisions based on public comment since the April meeting. KS reviewed the concerns from the original meeting and the research and lake visits that the Planning Department conducted to better understand the criteria that make lakeshore protection important.

JK opened the floor for public comment. Bob Ingenice asked how the protection zone measurement came about. KS offered the comment that 20' was a fairly short distance and that while initially proposed for 50', the staff heard the comments from the public and suggested 35' as a compromise to attain best management practices standards in an area where activity occurs. Bob asked if there was damage that KS could name specific that would cause the change. KS said that there were some recent issues. Bob asked for the exact issues. KS spoke about rip rap right up along the lakeshore. JK added that there were written comments from others that

recommended 100 feet or more. Bob would like to see it at 20'. John Moe asked if people making those recommendations had lakefront. JK said Yes.

Don Ingraham said to read the authorizing statement about activities in the water to anything in the high watermark. KS explains the impact of activity. Don Ingraham read the authority statement within the Lakeshore Regs (LSR) and emphasized "in the lake"; not outside the lake. He suggested the County was exceeding its authority.

Bob stated he did not understand the definition of HWM. KS explained it again and referred to page 26 of the LSR and read the definition. Bob asked about the definition of a solid dock. KS referred to the LSR.

Don Ingraham, stating he was from the marine industry, explained the "floating dock" and the design criteria is not valid for all circumstances and suggested reconsidering. Dave Gill (Trego) referred to the April meeting and how existing docks would be covered under the grandfather clause. He referred to page 22 and talked about how his property is elevated 47' and he has a stairway that goes to 3 different platform – would having a stairway to the dock be prohibited? KS stated there is a variance procedure for methods of relief in the event it wasn't already constructed. KS stated that the grandfather clause is on page 24 and read the provision. JK said that if they have to be replaced, you can work on them as they are but if the whole structure needs replaced or larger you would be subject to the new regulations.

Rhoda Cargill stated she thought the protection zone was arbitrary and suggested the new regulations are "extremely vague". She gave a couple of examples: 5.1 (variance) and the ability to understand the law they would be violating. She questioned what "undue hardship" and "adverse impacts" meant and the due process of law. She is against these regulations and is all for the MCAs. Rhoda then stated that if the PB recommends the LSR, they take a look at these extremely subjective terms and that they are a violation of state law. Rhoda stated she thought the regulations were zoning, using the example that some properties are less than 35 feet. She then started referring to the Growth Policy and the Supreme Court. Rhoda made a recommendation to the PB and to re-read all of this and really think of where this goes - what is the next step?

Donna Ingenice asked who would pay taxes on this land, if we take away 35' are they still going to be taxed? SB said yes. Donna asked what made the jump from 160 acres to 20 acres and what is the problem that brought that decision? KS said that the County had talked about reducing lake size for years but that after the first meeting in April it was clear that strictly using 20 acres included lakes that probably did not need included so the we looked at defining criteria.

SB asked for an identification as to who the "County". KS stated the Commissioners. Don Ingraham asked when the state's 160 acres reduced their size to 20 acres. KS said that the state allows counties to change their regs. Don Ingraham read the LSR. KS said that that version was almost word for word to the MCA; she read it.

Dave Gill identified a discrepancy between page 5 and page 26 from 35' to 50'. KS stated it was a typographical error. Rhoda brought back definition for Lakeshore and the vegetation and its vagueness. She said she came across a definition for ordinary high water mark in the MCA: where the water stops and the land starts. She talked about the times of the years that the water rises and falls and that it is only a few, if any, times a year. JK what if there was a year like 96 and we allow people to build there and they'd get flooded. Ron Brown said people need to be personally responsible. Ron also said that he is just upset with planning, and that we are losing freedom through property rights throughout our country.

Dave Anderson asked why we were just addressing lakes, that there are rivers and creeks being built on and nothing is regulated on them. He is upset with the length restriction because lakes are shallow.

Kathleen Johnson she agrees that the 1976 regs are good and that this is only taxation by regulation. She asked KS if HWM not being determined by the property owner is wrong, taking away that ability is just wrong. Herb Cargill state they had a place on Bull Lake and that he thought they knew what shoreline was. Anything recreational has to be 35' from that average HWM; and he is losing property due to erosion. He sees nothing wrong with the water meeting the land. JK said hoping people are "responsible" doesn't help the fact that if people do that and floods, guess who it comes back to.

Ruby Kahnt asked why is this happening because it is not a required thing but a "should we" thing. KS reiterated the County has had regulations and we were instructed to update them and protecting the values and natural resources. Steve Curtiss stated that the BCC has no authority to protect the values. SB reiterated that the planning staff was given direction to update the 1976 regs. The Planning Board hasn't had a lot of input to this point. SB suggested the reasoning why the BCC may have asked for it is because of all the differences in proposals. They could be looking for a "standard", since the 1976 regs were general. KS said that is exactly right.

Rhoda wanted to make a point of clarification that the county did not have "regulations" and asked if we had a copy of the 1976 document. KS summarized the document. Rhoda said simply put, Lincoln County just adopted STATE LAW and that we are not revising regulation but creating the 1st set. Rhoda asked why the need for change – she expressed there was none.

Donna Lynn Anastasia Shkurskey Ingenice – what about disabled people? JK said there are variances.

Don Ingraham read the GP and the statistics, income, etc... and what drives this new set of regulations; why is the poorest county in MT implementing all these new regs. JK asked if he attended the original mtg. Don Ingraham said he lives out of state so he didn't attend.

Rhoda asked if this was considered a public meeting. KS said yes. Rhoda said that it doesn't state it using the word "public," as did the Eureka meeting. She asked if this would count as a public meeting to follow per statute. KS said that the PB will have another meeting, then they could make a recommendation or table it, but the PH will be in front of the Commissioners. Rhoda had one last thought that the private property section is now struck out because it was too vague but she said it had meaning. This document is all about what someone can't do; and if the PB would think about the property rights of a lakeshore owner. Can she cut her grass (native vegetation) can she cut shrubs down that an owner doesn't like what are the rights? Rhoda would like to see the term property rights back in there if the document isn't going to be thrown out. JK added that some members, who have been here 9 years, that defining property rights is one's opinion and is different for everyone.

Lyle Brist hears a lot about personal property rights and those who are violating and compromising the lakes. He understands the reasoning for the large docks in the shallow lake; where are his personal property rights protected. Lyle talked about the letters received that were in favor. Patty Noble asked about the 5 years and possibility of updates, what happens if the water rises, etc... How often would they be changed? KS said no once the items permitted you are locked in. As for the 5

consecutive years that is a carryover from the 1976 regs because the data isn't always available.

John Moe bought a place 30 years ago and wants to rebuild and is with the 35 feet – can he rebuild or would he ask for a variance; the 1976 is good and he is sick of laws. Don Ingraham interrupted with “as long as you pay the fees, it's all about the fees.” Ron Brown thinks he knows the big problem is we are losing our morality in the country and instead of people being self-responsible you are seeing the government changing at a rapid rate towards those who are getting ahead and dig into their pockets to give to the governments favorite little charities. JK throws out – how many people think the 1976 reg are in violation – Don Ingraham said lots. Ron Brown said that regulations are a cancer.

Steve Curtiss tries to objectively look at both sides as he reads everything, sees comments, and at one time tried to go thru the document piece by piece and he said he would have written a complete new document. He talked about aerial view of site projects and that this document is about personal bias from those writing and promoting it. Steve started in on oversight and regulated oversight as from the same points from the past few meetings. Steve recommends that this document is not an honest or fair document to put on anyone and simply putting regulations, rules and fees are not the answer.

Mike France thanked the board for their time and wanted to leave everyone with some thoughts, and that there are a majority of people who are pushing back law and regs and he isn't trying to be rude but step back and ask where are we going and he is seeing governmental out of control governing on- everything. He also went onto how the court system is corrupt and creating more laws and regs to fix that is not the way. Ask yourself, is there an injured party at the lack of regs... back off and re-group.

Dave Johnson asked for the timeline on getting the recommendation to the commissioners. JK said this is round 2, there is another meeting in eureka, and then they can either decide on a recommendation or go back and review. Dave said then there is not set date these have to be done. JK went over the process of the review and recommendations, but they have not been given a time limit. Dave asked if there is still public comment accepted. The answer was yes. Kathleen Johnson asked if the board was all volunteers and who wrote this. KS said our dept did. Rhoda asked if a template was used. KS said they looked at other counties and BMPS, etc...

5. Planning Department Report

KS mentioned the Commissioners had approved Hurricane Ranch II subdivision with Planning Board's recommended changes. KS said she would get copies of the status update to the GP to the members not attending the last meeting. SB asked when that would be on the agenda again. KS said that there will be subdivisions for Sept & October, so perhaps after that. LO asked the Board if they got their packets for Little Country Road subdivision. They all stated they had. JK mentioned we had been sending info to his old address and to change it to 520 not 418.

6. Planning Board Comments and QUESTIONS

JK had a comment on the preparation by the developer & and engineer and that it was well put together. TA inquired about the location of the meeting in Eureka on the 18th. Lisa will put together a map and directions and send to the board.

7. **NEXT MEETING:** *September 21st 5:30pm – Commissioners Room (Libby)*
8. **Meeting Adjourned: 7:30pm**