

LINCOLN COUNTY PLANNING BOARD
Lakeshore Regulation Public Meeting
August 18, 2010

Minutes

In attendance: Charlie Newton (CN), Stew Briskin (SB), Dave Johnson (DJ), Ted Clarke (TC), Ted Andersen (TA), Joe Kelly (JK), Heather Carvey (HC), Kristin Smith (KS) & Lisa Oedewaldt (LO) – Mark Romey (MR) showed up late

Absent: Paul Tisher (PT)

Public Attendance: See Sign In Sheet

Meeting opened by Board President at 5:40pm with pledge

JK started the meeting about going over the Libby mtg and asked when we get to discussion that people from Libby last night wait until those who have not spoke get their chance and everyone will get a chance to speak (3-5 min). JK asked to for the crowd to hold the applause as this is not that type of mtg. Handed turned over the mtg to KS for the PowerPoint. KS went through the slideshow presentation with notes and read some additional comments. KS handed back to JK

JK opened the floor. Rhoda asked if the Planning Director was a part of the board. And who made the recommendations. And asked if the board does the recommendations then it should be the board to answer the questions and not the director.

Mr. Schwartz (Dickey Lake) thanks us for being here and questions on jurisdiction, he asked about the 30% of ownership criteria and those lakes be listed. Prohibited uses, are there any options for biodegradable, nitrates, to look at for consideration. Procedure; 5 working days isn't enough time to see the info for a board. 15 working days is confused on the need if there is the 5-day need clarification. KS clarified; standards all wood shall be untreated; in another section of criteria talks about paint and preservatives and could be conflicting info (inconsistency). Mr. Schwartz talked about the preservation and hopes these pass-

Craig Sell (Glen Lakes) design stds for docks; width & length and that it is very arbitrary and wants to know where it comes from. KS said it was a direct request from BOCC. JK said that could be a variance request. Craig said most lakes are shallow and restricting the dock size may not be beneficial due to tributary, sedimentation, etc...

Charles Selby (glen Lake); said it is an irrigation lake and the depths vary and GLID controls the top if it. His concern is the dock size restrictions. He spoke of a mtg at his house with the glen lake owners and they talked about the dock restrictions and asked if his dock was offensive. Another thing on Glen Lake, there was a lot of construction on the lake, before it came an irrigation lake, and talked about the support of GLID, but the HWM is close to properties and is within that 35' margin and would they be exempted; he didn't see anything in the regs that said so. SB asked a question if he did the construction 15 yrs ago. Mr. Selby said after the 15 years SB asked if he was in compliance and he said no. SB asked if he was permitted. Selby said no he didn't know there was a permit process.

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Roger Pittman (glen lake) 17 yrs; he is at a loss to understand when the county became involved on regulating anything on glen lake for anything other than a septic permit. Spoke about supporting LOCAL control and the county isn't local enough & would rather work with GLID.

Rex Nichols (not a lake property owner) said this was all about United Nations??21

Carol Blake (Tetrault Lake) referred to the state regs and the 20' set back. KS read the MCA statute. Carol asked again that it was regulation. KS said it is a state definition & explained. Carol asked if there are any other counties with more than a 20' setback. She brought out the lake book and the 20' would not suffice.

Shawn Frampton (Glen Lake) handed out a legal letter written by his law firm, dated 8/17/10, and stated all his issues with the regs. He talked about the MHW, the set back, and authority of control is very limited. He states the regs exceed the authority the county has. Mr. Frampton would like to see a setback for boats to pull up to the shore for safety reasons.

Tom Gun (Tetrault Lake) is in support of GLID because his lake goes up and down and wonders if we have any legal standing and that we are in legal trouble

Fred Grant (Idaho counsel for GLID) filed with C&R to remove Glen Lake from the review lake on 2 pieces of criteria. Legislature deems GLID a governing body over its waters and anything that affects its waters; the 2nd one 75-7-202 defines the lake, in conversation with the DNRC, and came up with the definition of a lake; he read the definition in regards to acreage and impoundments. Mr. Grant said he will be proving that it was never more than 35 acres. He also stated that we will be liable for fees because Glen Lake should not be on the list.

Rhoda Cargill (previous Bull Lake owner) brought up the comment about the dock size by and stated that Konzen is who made the comment and his response to her about her dock was, "too bad." Rhoda wants the document thrown out. She wants us to mail out to ALL lake owners the regs and get their opinion. Said if this is passed she could guarantee we'd have lawsuits. She states her background in science states there is proof that a "buffer of "15 feet" will filter out 90-92% of whatever issues there is. She asked if anyone on the board has checked out the USACE and their definition; Rhoda said Konzen, when dealing with her and the USACE, said that the USACE did not have a clue what she was talking about. She re stated her comments from last night in Libby.

Don Ingram (Glen Lake) These regs are stacked against the lakeshore owners and find the whole idea of these new regs are ridiculous and out of 56 counties on 6 have regs. He continued to talk about the same topics he did in Libby.

Rob Letlow(?) (Glen Lake) needs to look at grandfathering those who have received a permit from GLID and can't go back and have people remove the construction. JK brought up the existing vs. new or modified docks and where they fell in the regs. KS went over the provision about "grandfathering."

Joe Purdy (Glen, Sophie & Bull Lakes) he has dealt with the BOCC and most of these comments never reach the BOCC and fall on deaf ears. Why isn't the BOCC not here at these meetings as they are the final stop to pass the regs; He would like to have more meetings cause he doesn't trust the issues. He is a part of GLID and fighting to put fish screen in Glen Lake to prohibit fishing.

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KS goes over the process in regards to the BOCC, planning Board, etc...

Frampton – asked if the PH is in front of the BOCC.

Fred Grant asked why doesn't the BOCC doesn't want to get in if they asked us to restrict the length. KS corrected him on the actual request.

Richard Carter (Glen Lake) where do we go from here and how long will written comment be accepted. JK said that after this meeting the board will talk amongst themselves. KS corrected JK that anyone could submit comments up to and during the PH.

Rhoda asked how many PH will be held. KS said it would be up to the BOCC

Don Ingram – why weren't these regs mailed out to every lakeshore owner who would initially be responsible for the FEES, etc, and doubts everyone knows.

Bob Ingennis (not a lake owner) has experiences with waterfront. Talked about grandfathering, even if you have a % for damage repair, these regs will eventually be used to get rid of any structures.

Connie & Darryl Frank (Glen Lake/Canada) not really aware yet, integrated USA and asked how we communicate; Mail, emails, etc... KS went over the notification process we have in place.

Fred Miller (Dickey Lake) with the criteria that breaks down the lakes to regulate – how ids it formulated.
Dickey Lake

Kathleen Johnson (not a lake property owner) asked about the rational of coming out with the regulations. She wants to hear 2 or 3 CONCRETE examples of the proximity that caused this. KS said the regs were initiated by the BOCC. Kathleen said that she thought the BOCC wasn't getting involved. KS said they do not attend the meetings. Kathleen said then you can't give an example for this rationale. KS: No. Kathleen – then why did you use that language in the presentation?

Rhoda re asked Mr. Ingram's last question about not mailing out to the people. JK said we stayed with the same process. SB said the minimum law was followed. Rhoda asked then would the board put off the decisions and contact all the property owners of all the lakes (16) and give them 2 weeks to review. TA said if you look at all the owners/lakes and that would take an invested amount of time and money, the county is limited with fund, the board were volunteers and that we followed the law and that it should be left up to the owners to be responsible. Rhoda went into talking about the cost comparison of a lawsuit vs. mailing all owners.

Paul Stramer – all these regs are based on the growth plan for the county; is that correct? And if there were no GP for the County then this is all a worthless effort. SB said no there were regs since 1976. He brought up repealing the GP.

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Ruby Khant (not lakeshore owner) – had a little story about her life in AZ and trusting only an oceanographer, but essentially why are these regs being done.

Roger Pittman – he read the MT lake book and said there is valuable in on how to protect but his concern is about regulating the lakes. He started talking about Glen Lake and the irrigation authority. If you regulate Glen Lake to death, Glen Lake Dies. The USCOE will say remove the dam and you will kill the lake.

Jenny Emerson – Asked where the BOCC; at least one, specifically Marianne Roose. Was she not invited?

No other Questions Comment period ends 7:15pm

7:20pm Board Discussion Meeting

JK talked about the comments that have been given and a decision needs to be done either decide or table. JK is good to go back to 20'

DJ makes a recommendation to go back to the 20' set back SB said a full discussion needs to be done rather than a point by point. And go over the 2 nights of comments and the feel of the comments. DJ rescinded the motion

TA wanted to start out about Frampton memo and TA said it appears that the state statute does not authorize any of the stuff in the regs we want to do and TA wants the director to consult with an attorney in our county and see what our authority actually is. KS said she hasn't consulted with the Lincoln County attorney who is overloaded with large cases. KS also said Mr. Frampton said interesting point but there are also other jurisdictions that have these regs. HC asked if the 76 regs were ever challenged. KS said no. KS read the state law regarding the right/authority (page 10 of the proposed regs) the BOCC has and what rights they have; KS brought up the concern and the points of arguments from any direction depending on other interpretation, which the 76 reg are. TA read the more stringent comments/law from Frampton and is the county more stringent? TA requests legal counsel. SB said that may not be a position to ask and that a conclusion needs to be made and it is the BOCC who would be privy to that request based on the recommendation of the Planning Board. SB talked about past conversations with the old Director and not needing anything outside that 20' and would he be in non-compliance. SB brought up property rights and that they CAN be defined; he read a document he got from an attorney. SB said that 2 commissioners have personal prejudices against Glen Lake and that is wrong. SB says that the 76 regs are good enough and could be upgraded but not up to 27 pages. SB asked that Glen Lake (GLID waters) be excluded from the regs, because if we go to court, we would lose. SB talked about BOCC mtgs and the demeanor of the commission and their conditions and they will be liable for lawsuits. SB said that the reason the BOCC only made the request of these regs is because they want to see certain things implemented and the new regs should be made to conform. MR said based on what he heard the past 2 nights he wouldn't recommend approval and go through the horror and go forward. TC is not ready to move forward and the legal questions raised and the Glen Lake docs hit the planning desk says seek legal counsel, etc... TC said he would like to look at the 76 and see if they can be re-worded, maybe pull Glen Lake, maybe send out mailing to all 16 lake lakeshore owners. CN & DJ agree. HC has always had issues with the dock restriction and would also pull her support. TA agrees with Stew and sticks with the 76 regs and updates the wordings, clarify but not increase the restrictions. TA agrees also that Glen Lake should be dropped and as drop back

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down to lakes at all 20 acres. KS spoke to procedure again and public process and that's when the board should start taking and giving the department direction. KS if going fwd she asked the board for specific amendments to the 76 regs.

SB made a motion to not recommend the proposed regs. CN 2nd the motion – Motion Passed

SB made a motion to put the 76 regs on the agenda @ Sept mtg and have comments available to the planning dept - TC seconded the motion – Motion Passed

DISCUSSION:

TA said the motions were fine but he wants legal counsel before next meeting to see what is legal for the next meeting. SB said they don't need to worry about that; it's not the board obligation; it would be that of the BOCC

TA mad a motion to stick with Lakes to 20acres & Glen Lake removed from the list– CN 2nd Motion – TA rescinded.

DISCUSSION:

SB said that can be done as a change at the Sept Meeting

KS said legal advice would not likely happen before the September meeting

Meeting Adjourned: 7:50pm