

LINCOLN COUNTY PLANNING BOARD
Meeting Minutes
May 18, 2010

1. 5:30PM – MEETING CALLED TO ORDER BY BOARD PRESIDENT

In Attendance: Stew Briskin (SB), Dave Johnson (DJ), Charlie Newton (CN), Joe Kelly (JK), Ted Clarke (TC), Mark Romey (MR), Ted Andersen (TA), Heather Carvey (HC) via Star-Phone; Not in Attendance: Paul Tisher (PT)

Staff: Kristin Smith (KS),

10 Members of the Public present.

2. Pledge of Allegiance

3. APPROVAL OF APRIL 20TH 2010 MINUTES – Motion to approve: TC; 2nd TA; motion passed

4. PUBLIC COMMENT: NON-AGENDA PLANNING BOARD ITEMS - NONE

5. PLANNING DEPARTMENT REPORT

KS stated that there were no updates on any BCC decisions since the Planning Board did not have any recommendations at the previous month's meeting. She did want to show the PB about some changes to the Department's website. Primarily, the planning calendar is now on the front page, making it more user friendly and convenient. There is also a new feature inviting the public to be on a notification list for planning and development issues of interest to them. TA had a question about the number of comments of the Lakeshore regs and topic of manmade vs. non man made and asked KS if she had looked further in to that. KS stated that the Lakeshore Regulations (LSR) were not on the agenda and that there haven't been opportunities to research more info on the subject.

6. 6:00PM – AGENDA

a. Presentation from Glen Lake Irrigation District [Steve Curtiss (SC)] -

Joe reminded the Board of the request from the previous meeting from SC to speak to the Board and invited Mr. Curtiss to begin. SC started out his presentation with the uncertainty of the PB agenda and that the LSR weren't on the agenda. SC asked if the PB had a copy of what he sent down as an agenda. JK read the document which he referred to as "Coordination of Local Government; Proposed Lakeshore Regulations; GLID's role in future subdivision review; and Growth Policy." SC said that that was correct and that it could bring the board into the discussion of the Lakeshore Regulations but with the regs not being on the agenda SC wanted to know how his agenda items would work. KS said that the PB was hoping that SC would provide them with some thoughts and noted that she had asked SC for some more specific information for the PB to digest and since did not provide any information, the PB could just listen to SC's comments on the topics and take them under advisement. The board will not be discussing the LSR tonight because Planning Staff has not had an opportunity to research the questions from last month.

SC states that there seemed to be a continued amount of discussion regarding the Growth Policy and Comprehensive Land Use Plan (CLUP), which Mr. Vincent (CV) gave SC a copy and he then requested Todd Everetts (TE), with the legal staff at the legislature, to answer a specific question: whether the GP, CLUP authorized under state law, and properly adopted by state law, is legally defensible for the county to use to effectively impact federal land mgmt agencies, environmental review and planning process that are subject to federal cooperating & coordinating requirements. TE short answer was Yes; according to a letter dated 4/28/2010. Another letter dated March 5, 2009 addressed to Senator Curtis, from TE, stated Sen. Curtis asked whether adoption of a GP is a pre-requisite for MT State or local government to implement coordinating status. TE says NO. SC asserts that the same question, asked in different ways, is answered by the same person with different responses. SC stated that at the last mtg it was stated that the Board said the GP was a done deal and that they weren't going to discuss it anymore. SC states that the reason he came to the last meeting was in regards to the LSR and had 3 distinct factors that he was personally involved in and opposed the LSR applying to Lick, Costitch & Glen Lake. SC continued by reading from the TE letter to CV, "Federal Land Management Agency coordination requirements do not limit coordination just to County or city government but extend coordination to units of local government that are eligible to coordinate, which could also include School Districts, Irrigation Districts..." SC stated that TE and his council does recognize the fact that state law does grant GLID a local government position. SC further states that he has mentioned the cooperating vs. coordinating agency status only because it seems, at the request of CV, that the legislature has some say as to the writing of a CLUP. And the answer TE gave in the letter could be correct in lieu of THAT particular question; but incorrect in lieu of the grand scheme of the implementation and procedures involved in the in the coordination process. SC asked the Board, assuming they were all forest service men, if they knew all the federal requirements such as NEPA, etc... TA said that he didn't know by heart but we knew about them. SC asked him that in any status did he see where the federal government MUST cooperate with local governments or did he view it as the federal government MUST coordinate with local government. TA said he couldn't answer that without seeing the document. SC said that the statute read that they MUST coordinate with local government.

SC stated that the cooperating/coordinating status has become very clear to him and thru the GP process is how he tied into the opinion of the LSR in thinking that they are a huge violation of private property & citizens' rights; and especially on the 3 said lakes. SC asked specifically at the last mtg for those 3 lakes to be removed. SC is interested to have a decision on them. He is concerns, as a unit of local government, for citizens living on other lakes listed in the proposed LSR. Since that last meeting SC stated that he was called to Libby by an attorney to testify in court in a lawsuit on Glen Lake where a couple of parties were suing because of an easement. Many of the items he was "grilled" on was the "status" of Glen Lake and whether it was a navigable lake. KS stated the provisions were in Title 85. SC said he was asked if Glen Lake was categorized by this law as navigable water and he replies "Absolutely No." Is Lake Koocanusa; Absolutely Yes. SC summarized his testimony in the court case and re-stated his position that GLID owns Costitch Lake, and built Glen Lake. Transcripts of his testimony are available in the planning office.

SC leaves the LSR and Lake discussion and goes on about the false claims about a GP and coordination plans including:

1. A GP is required to implement coordination - SC states that to be FALSE
2. A GP is the only method by which legal standing is possible regarding enforcement of provisions of a coordination plan - SC states that to be FALSE
3. Coordination cannot be successful without a GP behind it- SC states he hears that through Lincoln County over and over - SC states that to be FALSE.
4. Since there is no MT statute that specifically authorizes a coordination plan, such as a plan (?), is not authorized at all - In other words, a county cannot adopt a coordination plan - SC states that to be FALSE

SC stated that during the GP public process, there were minor debates on topics, and that he sent a request to come down and sit as a local government with the PB and go over some of these issues that were of major concern to him as the head of a local form of government, which by MCA, as SC stated, grants a lot of authority to an irrigation district.

SC discussed the problem of subdivisions going in disturbing the district and its people during the process of reviewing the subdivision applications. SC stated that it's not the fault of the PB because they were appointed by the BCC and just weren't given enough tools to make wise decisions. SC thanked the planning department for forwarding subdivisions to his desk. SC talks about past history with the BCC and asking to sit in on subdivision reviews. SC states that the BCC denied these requests, as quoted by SC, "Absolutely not, you guys don't have brains enough to be able to participate in the review of subdivision..." which as a result of these denied requests, SC gets calls every week from people who wonder how they can get water. SC tells these people to call the BCC because they were the ones that would let GLID in on that review process. SC again requests that because GLID has authority and information that it would be real wise to involve GLID as a unit of local government to participate in some of these decisions that the PB or the BCC make.

SC expressed his great want for the agenda to have accommodated the re-visit to the LSR because, and this is not a threat but an absolute fact, GLID will exercise his authority as local government. MR interrupted and asked SC if he was elected. SC answered yes he was from the constituents of the North Lincoln County. MR asked if he was representing the Irrigation District and not the whole county; KS stated No not the whole county. SC interjected that it would take hours to go thru the MCA, but recommended that the Board grab a copy of the MCA and read down thru the authority that an Irrigation District has because it is not JUST within the boundaries of their irrigation district boundaries that they have authority. MR asked how come he doesn't vote for him. SC said because he isn't a part of the district. MR asked then how could he think he has authority over the whole county if he is only elected by the north end and not all the county constituents? SC doesn't answer the question but goes back to Glen Lake. MR says he understands Glen Lake but still wants to know how he thinks he has authority outside the boundaries of the district. SC still doesn't answer the question but tells MR that something he can do is impose coordination on the county, because GLID is within the county. And if "he" imposes coordination onto the County he will have a definite say in exactly what goes on in this planning process, and he has both federal and state statutory authority to do just

that. MR asked that he had federal authority and SC replied Yes we do thru FLPMA, NEPA, etc... as stated in TE's letter. SC asked MR if he read the letter, MR stated No. SC asked him if while he was sitting there if he'd like to glance at it and gave him a copy.

TA brought up the letter SC sent to the USFS concerning his authority with respect to forest planning and implementation and OGC from Region 1 responded to the letter, which TA read, and it appeared that in the eyes of the USFS and OGC, GLID did not have near the authority that SC thinks they have. SC stated that in the eyes of OGC that was correct but however OGC main issues of contention were GLID's Resource Plan and the claim of GLID of county supremacy. SC stated he was pleased TA brought it up because SC says that the OGC states they do not want GLID involved. SC goes over a letter from Paul Bradford and the status and coordination issues with GLID and their Resource Plan. SC asserted that Communities for a Greater Northwest (CGNW) is using GLID's plan to write a Natural Resources Plan (NRP) and asks a question of the PB, "Is there money exchanged or a grant to write this..." KS informs SC that neither the PB or the Planning Department fully understands the relationship of the Natural Resource committee or how it's being funded and that they have not been privy to the discussions of this group or the NRP. SC then asks, "so what you are basically saying, between the lines, is there is some funding." KS interjects that she does not believe there is and that it is voluntary.

SC brings up a letter he received from CGNW acknowledging their appreciation for what GLID had written because they have been wandering the county for info that GLID's NRP had already found. SC says that GLID is the only one that has submitted an alternative to the proposed Galton project. SC states that Congress says CGNW must take that into consideration. SC talks more and more about coordination and cooperation issues with the County and their denial of GLID's involvement and that they will win in having their right to flex their authority under the MCA.

SC directed the conversation again back to the LSR and the fact that the board must not have read the codes up in Eureka when they were telling the people that the GP was not a regulatory document - because SC says he is would cite the code that says it is. TA asked him to read it. SC starts with a few words and then says it's a lengthy code but if you go thru it at the end there is only one conclusion - it refers you to other codes that it boils down to one simple word: "zoning." SC says that he doesn't know anyone in the County, unless they would personally benefit from it, who wants zoning. SC stated he was all for regulation but that he knew that the people living around the lakes do not want regulations or zoning; that the LSR's are zoning. SC made reference to the GP being Smart Growth; and some Wisconsin people he has spoken to about no zoning. TA asked SC if he thought the lakes' natural features could be preserved without LSRs and SC said "Yes Sir" he does and referred back to Prezeau's court case and SC's testimony. SC reiterated his involvement with the Galton Project, BioMass Study; current events in the papers; and the Grave Creek letter from USFS.

Rhoda Cargill (RC) interrupted and asked SC a question in regards to him supporting regulations... SC chimed in and said that it was perhaps a misstatement and that he is actually for oversight and not regulated oversight and regulation was a bad word.

Another audience member, who did not identify themselves, asked the question that the county would have to do zoning before they could implement the lakeshore Regulations; SC interjected that LSR were zoning. KS told the group that they were incorrect on that assumption; JK stepped into the conversation and said that SC was here to address the planning board; SC apologized. JK said that the board would take everything SC had said under advisement and get back to him on what was talked about. JK also explained why SC wasn't able to speak at the last meeting, because if the Board let everyone come up and speak who attended a meeting, the board would be there for hours on end. So that is why JK had SC on the agenda to keep an orderly fashion. SC said thank you and will be coming back over and over again. JK said that people need to understand they are just an advisory Board to the BCC and do not have legal assistance advising them during the meetings on laws and codes, etc.

KS stated that everyone who added an e-mail to the sign in sheet at last month's meeting will be notified about future meetings regarding LSR and that the LSR have been in existence in Lincoln County since 1976. In addition, she reminded everyone that the LSR are NOT zoning. SC replied that it was all a matter of interpretation and as he read thru the documents he prepared and in the code he doesn't see what else it could be defined as and he will continue to stand on LSR as zoning.

JK reminded the public to sign in and asked SC if he wanted his documents back and he took them back from the board.

b. Update from Communities for a Greater Northwest on Natural Resources Plan
CGNW was not present to provide an update

c. Introductory discussion on Sand and Gravel Resources (SGR) in the county
(see memo) JK opened the discussion and asked KS to review her memo. MR asked for a copy of the memo. KS handed out copies. KS talked about the preliminary map that has the info on what is within the county. KS talked about the legislative bill that required sand and gravel (and its inventory) resources to be added to the GP. KS provided some background, the importance's of the SGR and what the board might consider to be adverse effects to adjacent landowners and the apparent lack of the resource within the county. KS talked about the permitted sites that are in Lincoln County from available data. KS talks about the NRCS and how they evaluate the ground to check the soils and use a numbering system for the resource – Lincoln County does not have a good source of gravel. SB asked if these results were for natural gravel deposits or if in Lincoln County we have to crush to get gravel? KS agrees that it addresses natural deposits. SB asked if the gravel is qualified as ¾" and below. KS said she did not know and that the Planning Department would look into it. KS informed the board that this was just an opening to discussion on the issue of SGR and some of the text that needs to be added to the GP. SB says that he is confused as to what needs to be shown on the map and what needs to be addressed, such as gravel mining permits or where the stone is crushed. What is the nature of the 83 locations on the map? KS said these are permitted locations already according to DEQ. SB then asked if it was to locate where the natural sights were. KS said yes and that there was kind of an idea to those locations based on the NRCS info. SB said that the natural resource is all that needs to be located. KS read the MCA statute. SB still questions whether its natural

deposits (3/4" and below) or manufactured gravel that needs to be identified. TC asked that DEQ must have criteria to know or permit these pits.

Chuck Fahner (CF), with the planning department, brought in map and reviewed the symbols and where he gathered the info for the data. The board identified the names of the crushing companies who do the rock crushing around the county. Someone in the audience, who did not identify themselves, identified more crushing companies. The Board directed the Planning Department to contact these entities and work on preparing some language for the GP.

7. PLANNING BOARD COMMENTS AND QUESTIONS

a. Lakeshore Regulations

TA asked what the next step was for the LSR. KS stated that since the last meeting, the planning department hasn't had an opportunity to pick up the direction that the board gave the dept. and that they were looking into the questions. SB would like to address some of the questions that were brought up by the audience during the LSR discussion and he had spoke to an attorney in regards to property rights and got information for that further discussion. KS said the dept would make the modifications based on research and feedback.

TA talked about the existing regs and it not being zoning and would like to see an outline from the law on updating existing regulations at the next meeting. KS said that the law allowed the regs to be updated at any time, but by interpretation, all regulations now have to be in compliance with the GP; and our GP directs the regs to be revisited. TA said that if we review the regs we have to go thru public review. KS said yes and that process was started by the last meeting on the LSR. TA asked if the Board would have to follow the process like with the GP and have meetings at various locations. KS replied that it was up to the Board, but maybe meetings in the north and south would be appropriate, but ultimately the BCC adopts them. KS also clarified a possible confusion that the PB doesn't actually look at the Lakeshore Permits themselves, just the regulations. SB said well you (being the planning department) were the governing body. KS corrected him to say that the BCC makes the decisions on the Lakeshore construction permits. KS reminded the Board of the 3 primary changes: 1) the distance of review zone; the number of lakes, based on size; and the dock size limitation.

TA asked SC for him to provide a copy of his letter from TE. SC then starts back in on the history of the letter going back to a year prior and the difference of opinions. KS said you will usually find that with any legislative session. SC said that he would send the e-mail to the Board. KS said for SC to send email her the letter and she would distribute. SC asked for a copy machine instead. TA said to e-mail it to KS.

b. Re-appointment of Dave Johnson

KS asked DJ if he wanted to go for another 2 years. DJ said yes he wanted to be/remain on the board. DJ also added that there won't be any long "hiatus;" in the future as last year was his last long venture. TC asked if the re-appointment was up to the Board or the BCC. KS said the BCC made the decision, but that the board could make a motion to recommend. SB made the **motion** and it was favored.

c. Other Items

1. *SB gave his notice of resignation. September will be his last meeting as he took a job position to the Polynesian Cultural Center in Hawaii for up to 24 months.*
2. *TC asked for an update on the Customs & Culture process. KS said that since CGNW was not in attendance she did not have an update for the Board. TC said he could provide some information as he went to the meeting in Eureka last week and the group did get some people there and they have changed the dates for Libby & Troy meetings. TC said that he thinks they should have more of a public notice to get info out. KS said she spoke to CV and said the planning dept offered to put it on the calendar.*
3. *TA said that the forest planning for KNF plan is starting up again and whatever info the CGNW had would be needed on a timely manner. TC asked for a deadline date. KS said she wasn't in the loop. TA said they were just starting up but the BCC should have more information.*

8. NEXT MEETING:

June 15th 5:30pm – Commissioners Room (Libby)

JK asked HC, who was still on the star-phone if she had anything; HC said no.

9. MEETING ADJOURNED - 7:34PM

Before the Board got up to leave, an audience member, Karen Repine, who was not present during the “Public Comment on Non-Agenda Items” agenda item wanted to talk to the Board about the “e-Waste e-cycle events” and said that she could e-mail the information to KS who could forward the info to the board.