

LAKE COUNTY PLANNING BOARD
February 9, 2011
Meeting Minutes

MEMBERS PRESENT: Brad Trosper, Lisa Dumontier, Steve Rosso, John Fleming

STAFF PRESENT: Tiffany Lyden, Joel Nelson, LaDana Hintz, Lita Fonda

OTHERS: Jim Grant (Lake Mary Ronan), Ann Grant (Lake Mary Ronan), Hugh Corn (Swan Lakers—Swan Lake), Mary Supan (Swan Lakers—Swan Lake), Christi Buffington (Flathead Lakers—Flathead Lake), Mike Wilson (Flathead Lake—Lakeside)

Brad Trosper called the meeting to order at 7:07pm. A quorum was lacking, so the 2011 Chair and Vice Chair action was postponed, along with Dec 2010 and Jan 2011 minutes.

It appeared there was a quorum of those present at the November 2010 meeting for the November minutes. Steve Rosso noted corrections. In the third sentence from the end in the first paragraph on pg. 9, 'snow' was changed to 'sand'. Four lines from the bottom of the same page, the sentence was corrected to read 'Steve said at the Great Lakes, people used groins to keep sand....' On pg. 10 in the third paragraph in the third line, 'dry stocked' was changed to 'dry stacked'.

Motion made by John Fleming and seconded by Lisa Dumontier, to approve the November 2010 meeting minutes as corrected. Motion carried, all in favor.

LAKESHORE REGULATIONS UPDATE

The attendees from the public introduced themselves. Tiffany Lyden proceeded where the review left off in January, on pg. 5 of the 'General Construction Requirements', with the Impervious Cover section 5-2.C. She backed up to the beginning of section 5-2.C on pg. 4. Steve asked about the comparison table. The Tribe and Flathead County had a different kind of program where there was a total for both land and over water. If you used your 8 square feet in the water, you were only allowed 2 square feet over land. He asked what people thought of the idea. Tiffany hadn't talked to Flathead County about how that worked. She leaned towards the idea of having it separated. Otherwise you could have very little over the water, but cover a lot of the land. In her view, coverage over the land was more important to look at than coverage over the water. The impacts to the water quality would be more direct. John asked if an 800 square foot dock was pretty big. What did people typically build? Mike described a deck that might go out 60 feet and was 8 feet wide, which would be 480, with an added wing, say 20' by 8'. Steve checked that a 30' wing was allowed. Mike and John thought the 800 square feet was not overly restrictive. Steve said a 60' dock with a 30' wing was 800 square feet. With Flathead County's ideas, that would allow 2 square feet extra over the land. It was something to keep in mind. Mike said that if you had pretty minimal frontage in Flathead County and wanted to build a dock but nothing on the shore, you could transfer the square footage out for the dock. Steve and John thought perhaps these might not be kept separate. Joel wondered if it would be tough on the reservation, since the Tribe had jurisdiction over the lake. Steve noted the Tribe had the same thing as Flathead County. Joel replied if they used all of their impervious coverage in the

Tribal jurisdiction, and then the County denied something, they'd probably be in a fight with somebody. Tiffany suggested she could talk to Flathead County about how that worked, and they could look into how that would work with the shared jurisdiction.

Tiffany pointed out the marina section still had blanks for numbers. She wanted to talk with Jim Westermann to find out what numbers the Tribe was using. Previously the number was 10 for commercial marinas, and 12 over the water. Steve recalled the commercial marinas needed more frontage. Making the number the same as for a residential dock really didn't restrict it, since the frontage requirement was greater. Tiffany thought that might hold true for the part on land also.

Tiffany asked for thoughts on 5-2.C.2.e, where impervious surfaces shall not be connected to paved areas outside the lakeshore protection zone, to avoid sheeting of runoff going towards the lake. Should there be a break to avoid direct conduits from sidewalks or the like? Steve thought item b suggested the impervious surface be sloped away from the lake. Outside the protection zone, there would be a space for a large puddle if there wasn't a drain there. He thought it seemed logical that these areas weren't connected or in some way allowed the water to go somewhere. Tiffany suggested something about these not being connected unless they don't drain directly. They didn't want to send a lot of water from inside the lakeshore protection zone into it.

Christi Buffington referred to the last meeting's discussion on paving/sidewalk along a seawall and how that would drain back to the lake. It seemed like having the sidewalk on top of a seawall would then conflict. Tiffany thought Brett McCrumb said you didn't want it to drain into the soil, as that might cause a problem structurally. Under the proposed regulations, this [paving] would be required to be tilted so the runoff went back. When there was a lot of wave crash, potentially significant water would be added into that zone. From the standpoint of providing water for vegetation, that helps. Seawalls often dewater by cutting off the connection between the water and the land. You didn't want to swamp things, either. Steve said generally you wanted to drain the soil behind the retaining wall so you didn't have a lot of hydraulic pressure behind the retaining wall to push the wall. He didn't know what the answer was. Whether the concrete wall was capped by a sidewalk or not, you would also have stormwater runoff that would back up behind the wall unless you graded it out.

John said he wouldn't want waves dumping water on the land behind the wall. He'd want the water to get back in the lake. He thought Tiffany had this covered. There were two sources of water: the runoff and the waves. Steve suggested that was the difference. Perhaps construction could be so stormwater didn't run into the lake, but maybe still slope the sidewalk out to the lake but with some sort of curb or with soil below the edge so stormwater on the land that ran towards the lake filtered through the soil instead of running on the concrete sidewalk and into the lake.

Christi referred to the national management measures to control non-point source pollution. It talked about reducing the hydraulic conductivity from the waterway and the impervious surface. The sidewalk in the example would have a lot of debris on it from the lawn, from birds and other things, and that would all go in the lake. Just by not having that adjacent to the water would help. National non-point source components were trying to get away from that scenario, possibly through gravel or gravel with some planting. Lawn was better than a sidewalk. John

checked that we had language somewhere to discourage this kind of construction. This was plan B. Once you built this, you had a problem. Christi said it was hard to reclaim this. Tiffany thought it was discussed in the marina section, and maybe they could look at some incentives so the impervious surface wasn't right by the water. She requested some time to look for options for this one. It was an important one. They might be able to work through this when they look at the vegetation component of the regulations. These might be tied together.

Mike said a gradual lakeshore didn't have the water velocity of the storm runoff. The steeper the ground adjacent to the lakeshore, the more mitigation or the more of a break you would need to have, in order to have time for the water to infiltrate. For the example shown, he thought the lawn was probably sheeting water down to the concrete in a storm.

The group moved on to 5-2.D on removal of debris, which was rearranged more than changed, and 5-2.E on burning. Christi asked about slash and construction debris, and perhaps the regulations should say any burning in the lakeshore protection zone. Tiffany agreed. She mentioned the exceptions for burning, including small campfires. She was particularly interested in the effect of burning of the lakebed, since that happened on Swan Lake. The water was down for much of the summer season, and she understood the fires happened there. She received comments from Tom Bansek at the Biostation that any burning below the high water mark was a direct addition of nutrients into our naturally low-nutrient aquatic systems. Even campfires would negatively impact water quality. She noted Flathead County prohibited campfires below high water on the exposed lakebed. Bonnie Ellis from the Biostation mentioned she was on the Planning Board when they discussed the creation of the burning policy. Since then, many other counties and cities created ordinances prohibiting shoreline burning across the country, for the same reasons they agreed upon when the policy was established here. Both phosphorus and nitrogen stimulate the production of algae in Flathead Lake. She included a summary. Ash contained phosphorus as well as other substances. Burning degraded the water quality. You didn't want ash in the lake.

Hugh C and Mary S from Swan Lake and Jim G from Lake Mary Ronan commented it was unusual. People used fire pits. Steve asked about the 'extreme cases' mentioned in 5-2.E.2.a. Was a permit needed for an 'extreme' case? How was 'extreme' implemented? Tiffany said this would require a permit. Steve thought a procedure needed to be there also. He thought campfires should be landward of high water. Mike commented there were contractors with a 3' campfire who would burn up a whole deck. Christi noted burning was the #1 nutrient source into the lake. Jim described the process by which he moved a rotten cottonwood tree by his dock to behind the house to burn. The tree fell on ice and was hauled. The moving could be done.

John observed there were people here from each of the lakes, and they seemed to be okay with taking campfires out. Tiffany mentioned permanent fire pits on land. Jim specified these were above high water. Tiffany said there was no burning on land except the 3 x 3 campfires, with none allowed below high water. Mike said from an air quality perspective, you couldn't burn construction debris. Steve suggested saying in the first sentence of the standards that burning was prohibited, period. The recreational campfires (smore and marshmallow compatible) would be an exception, specifying clean fires, with natural wood only. Christi suggested a ban on burning driftwood too.

Christi related a discussion of wood treatments, preservatives and wood superglues with a lead researcher for a wood/forest product lab who specialized in leaching. He said stain didn't prevent leaching at all. The stain would leach but didn't add to the lifespan of the wood. It might help [lifespan] from the sun but not from the water. It was only on the surface and would not protect from rot in any way. The prohibited wood preservatives mostly contain copper. Those preservatives soaked into the wood and were in the interior. He did not recommend the use of wood preservatives in a lake used for drinking water. The wood products industry had Best Management Practices. A section described what to use treated wood was needed where the water was for drinking. She wanted to share what she'd learned, given the previous discussion regarding staining wood. The wood could be pre-stained. If there was an expectation to restrain, like the can of stain might recommend every three years, the researcher saw that as a negative to water quality. Further, the stain cured at warmer temperatures than would be found at low pool and it didn't add to the lifespan of the dock.

Tiffany recapped the discussion from last month for those who weren't present. Currently wood had to be untreated. This was certainly the case over the water. On the land, it was more hit and miss. There were comments about metals that were pre-painted, leading to an expectation or at least a suggestion on whether people should be able to maintain those things, or whether we should acknowledge that some of this was happening. Could we look at allowing some paint or stain for a boat shelter, above the water, that would not be continually hit with water and where the leaching would be less? Maybe this would exclude the dock surface. Christi said we also mentioned there was nothing in the regulations about the use of sealants, stamped concrete or colored concrete. Those sealants might be more toxic than what would be good. She's only done a little bit of research on this, and so far this seemed to be the case. Tiffany showed some pictures.

The group moved on to section 6 on lighting. Tiffany suggested looking at an acceptable threshold of lighting, where something above the threshold would require review from the County. Christi suggested saying adjacent properties and away from the water surface in 6-2.e. Tiffany referred to lighting from some of the zoning districts, and showed pictures and examples of lighting. She emphasized that as long as the lighting met the criteria, it would not be reviewed. Steve commented that it seemed hard to put something along the edge of the dock that wouldn't illuminate the water. Maybe rather than say you couldn't shine the light where it would reflect off the water, you could say the installation and intention of the light was not to illuminate the water. If some of the light spilled onto the water, that was one thing, versus a spotlight on the water. The intention was to avoid illuminating the water. John liked using the positive phrasing of saying the intention was to avoid illuminating the water.

John suggested saying 'dock surface' rather than 'dock level' in 6-2.f. Christi recommended removing LED's with solar-powered and low intensity. Some LED's were intense. John and Steve both thought any kind of light was fine, as long as it was low intensity. Tiffany highlighted that the hope was to keep this section simple, and avoid being the light police. They also didn't want to evaluate lights within a boathouse, for instance. For a boat shelter or something over the water, lights intended to light the interior for temporary boat loading would

be allowed. There was a modifier to make sure it wasn't lit all the time. Lighting would be for temporary loading and unloading. John observed this was why this was divided into two items.

Christi recommended taking the last sentence of 6-2.j and move it below 6-2.e. This would give a new 6-2.f, and so forth. Joel thought 6-2.e read as it did in order to address lighting that was sourced outside the lakeshore protection zoning. The intent was to prevent light from shining in. He envisioned unfettered lighting of big spotlights 30 feet in the air shining in to light up the lakeshore protection area. Steve summed up that they were trying to regulate lighting outside the lakeshore protection zone. Lisa described a cabin with huge floodlights. There were three sets of them on the waterside. When those were on, they attracted numerous bugs, and they were obnoxiously bright. Christi thought this was similar to addressing stormwater coming in to the lakeshore protection zone. Steve asked if other electrical uses were addressed somewhere else. Tiffany pointed to the utilities section. She touched back on that from December and on electrical lines.

Steve asked if marinas would be expected to follow the same standards. Tiffany asked what the group thought. Steve thought most of the lighting around the lake would be found at commercial marinas. He thought most of the discussion had been geared towards the individual landowners. Marinas might have different issues. Tiffany showed a common use dock near Rollins. It might comply, provided it had some shielding. This could be done at a public marina. The light just needed to be directed down. Christi thought they could fall under 6-2.c. Steve summed up that the marina might need a public hearing, which would be a good solution. Tiffany specified that as with other things, the existing lighting would be grandfathered. She showed a picture of downward-directed lights. Given the holiday light strings in the picture, she remarked that some places gave exclusions for holiday or special occasion lighting. Returning to the downward-directed lights, she noted there would be some spillage, given the location of the light at the edge. She showed some stair lighting.

Tiffany pointed out that many sections of the regulations had been covered. Some administrative sections, such as how to handle variances, and the vegetation section remained, plus non-conforming structures, definitions and other projects if we wanted to cover things like gazebos. She proposed that the Board take a hiatus in March. John suggested involving people who were here in the summer as part of the public input. Tiffany thought the group could do a lot of the work and come up with some proposals that people could hash out when they were here [in summer]. She detailed some ways the information had been made available to the public. Steve checked that Tiffany envisioned a couple more nights on the individual sections, then skip another month and then try to review the whole document. Tiffany said they'd want to have a meeting to go over the whole thing, and then have a public hearing, so they might not want to skip a later meeting. Mike suggested they might want to have another public commentary after an initial one, in case changes were made, based on that. Tiffany observed the Commissioners would also hold a public hearing after the Planning Board recommendation was made. The general informal consensus was to take off March and aim to have public hearings in July or August. Joel commented there might be another item in April for the Planning Board.

Hugh C asked if he missed the dock section. Tiffany offered to show him what the group talked about through for docks. Jim G asked about violations. Tiffany explained those would be

covered with the administration stuff. Jim said swim raft regulations were mentioned in 3-5 #7, but he couldn't find regulations on them. Tiffany mentioned they weren't addressed, like gazebos or trampolines. She hoped to flesh this out a little bit. Maybe they could do something where under a certain size or certain distance from the water would be permissible, and otherwise not, or they could be permitted in the way docks were permitted. Jim thought some kind of regulation on size, largeness and distance would be good because they were hazardous. These were starting to show up with the demographics change.

Jim had some recommendations on the general provisions. He was concerned with what could be done to help strengthen the purpose and the [inaudible] and the purpose of the lakeshore protection regulations. When a lake got to a bad state, what would help it turn around? One idea he had was to extend the [buffer] to 40' or 100' if the lake was determined to be impaired, and to go back to the 20' strip when the lake became good. That would help with the nutrients, given the load and given the [inaudible] based on Lake Mary Ronan. He'd written up some short recommendations based on the constitution the County used, in order to make a longer strip on certain lakes under certain conditions. He thought Lake Mary Ronan was dying now. In the fall, it looked like a treatment plant for about 2 weeks. It was loaded with nutrients. They were concerned with some of the work that was done on the north end of the lake. John thought that made sense. It was a different kind of lake. Jim said this was allowed under the constitution under the part that was stated in 'Authority'. He mentioned the livestock there, one of the problems the EPA said was causing the lake to die, along with forestry practices.

Steve checked with Tiffany that the 20' setback was set in state law. Steve asked if there was a provision where the county could change that distance, based on conditions. Tiffany wanted to look at this. She thought someone talked about extending the 20' distance at the state level in a recent year, but it hadn't passed. Jim said he couldn't find the 20' distance, but he did find these other two statements. As a group, they were trying to get active up there as a group and clean up a lot themselves.

Christine asked if the lake was dying from lack of oxygen. Jim replied that the EPA said any extra loading of nutrients would kill it. Right now, it was non-supporting for fishery or aquatic life. John mentioned they were told a subdivision they approved at the SW corner would actually help things out. Previous to that, there had been a lot of public use with people coming down close to the lake and camping. What did it look like? He thought Plum Creek owned it. Jim thought he meant what they called Free Camp. A few years ago, two outhouses were built over there. Some people left trailers in places, pretty close or right on the lakeshore. That was still happening, and that was a policing thing. John thought that was a trade-off. As far as Jim knew, nothing had been approved. They were looking pretty closely at that. They didn't want somebody to come in and do a big development and not do it right. They wanted it there for their kids and grandkids. They didn't to live on an algae pond. He didn't think anyone else wanted to, either. The lake was heavily used for recreation.

OTHER BUSINESS

Motion made by Steve Rosso, and seconded by Lisa Dumontier, to adjourn. Motion carried, all in favor. Meeting adjourned at 8:30 pm.

