

LAKE COUNTY PLANNING BOARD
May 14, 2014
Lake County Courthouse, Large Conference Room (Rm 316)
Meeting Minutes

MEMBERS PRESENT: Bob Kormann, Sigurd Jensen, Janet Camel, Jerry d'Aquin, Rick Cothorn, Roland Godan, Bob Stone, John Fleming (7:06)

STAFF PRESENT: LaDana Hintz, Robert Costa, Matt Ellermann, Lita Fonda

Bob Kormann called the meeting to order at 7:00pm.

Motion by Janet Camel, and seconded by Rick Cothorn, to approve the March 12, 2014 meeting minutes. Motion carried, 6 in favor (Bob Kormann, Sigurd Jensen, Janet Camel, Jerry d'Aquin, Rick Cothorn, Roland Godan) and 1 abstention (Bob Stone).

LAKESHORE PROTECTION REGULATIONS AMENDMENT (7:02 pm)

LaDana Hintz gave some background to the proposed amendments. She noted that the memo also was sent to the people who had been interested in the big lakeshore updates that began in 2010. She emphasized that tonight they would be looking at only two specific lakeshore amendments that had been legally noticed. The group was aware that the big lakeshore regulation update was in progress. The Commissioners asked that tonight's two items be initiated now because these were things where variances were typically granted. The variance process was lengthier and more expensive for the applicants. The full update had been delayed by staff turnover. Staff hoped to get back to the full update in the near future, maybe towards late summer or early fall. She presented the staff memorandum for the two items. (See attachments to minutes in the May 2014 meeting file for staff memo.) Bob K confirmed with LaDana that each proposed amendment would be voted upon separately. LaDana mentioned that most of the comments submitted pertained to the big lakeshore update rather than the two amendments proposed for tonight. The comments were included since they were submitted, and copies were also put with the big lakeshore update.

Bob K checked about the comments received that inferred the 5-foot depth at the dock end was problematic in Swan Lake. Robert thought there would be discussion on that. A previous policy decision strictly interpreted decisions on dock length. A lot was involved with dock length on Swan Lake. Staff wanted to be more willing to accept ways that demonstrated 5 feet of water depth that weren't overly strict or that put applicants through hell. The proposed amendment did give people on Lake Mary Ronan, Swan Lake and Flathead Lake an additional 10 feet. If they didn't have 5 feet of water depth, they could go up to 100 feet, based on the lakeshore regulations. There were people who didn't get to 5 feet of water depth at even 100 feet. They were trying to find ways to make things more useable, rather than a strict standard that was hard to enforce or work with on either side. He believed if staff looked at things differently, they could address what was going on at Swan Lake, at least temporarily. There were things to be fixed in the bigger update. Right now the Commissioners had asked for the constant request for 60 feet for docks to be addressed. They were trying to remedy that right now. They were open to a bigger discussion with people from Swan Lake and Lake Mary Ronan about the issue of

what worked for them and what they needed to see in these regulations. There was a lot involved here.

Bob K and Jerry thought this sounded like this was asking for approval of a 60-foot dock length and 5-foot water depth but not really meaning it. Robert said they meant it, and clarified. Joel [previous Planning Director] had a very strict interpretation on dock length and dock issues and where the docks started and were anchored for Swan Lake. It wasn't working for everybody. John [Snyder], Karl [former planner] and Joel fought over this. There were bigger issues that weren't necessarily going to be fixed by these regulations. For Swan Lake, he and John S and the other staff needed to talk about how to make this work. They still might not be able to agree on everything but he thought they could work with [John S] better.

Janet confirmed with LaDana that the 60-foot length was the same length used by Flathead County and the Tribes. LaDana observed that Tiffany [Lyden, former lakeshore planner] sent an email today commenting that this was consistent with what had been discussed and proposed at previous meetings for the big update. Janet referred to comments from Steve Rosso to consider making the 60-foot length amendment for Flathead Lake and some other amendment for Swan Lake. Could they adopt this amendment, which was more lenient by adding 10 feet, and then come up with another recommendation or exception for Swan Lake? LaDana thought that would come later in the big update. [Tonight's amendment] was a band-aid to some issues they were seeing now. Robert added there were two sides to this. One was what the regulations said and the other was how they were interpreted. They were trying to fix the regulations for certain circumstances that they'd seen. There were other policy things that needed to be worked upon to make it work for people.

Roland said this universal regulation of footage based on a mean, while the letters he saw dealt with low water levels in late summer. It completely changed on different parts of the shoreline. What might work on one property might not work on another, depending on whether you had a shallow or steep pitch. Some might not reach a 5-foot depth with a 300-foot dock. He thought it should be done on a case-by-case basis rather than based on water depth. Robert didn't think they had a perfect answer for that right now. What they had were regulations that were written specifically. They were trying to fix them temporarily so they could fix a problem that they saw a lot. 300-foot docks weren't proposed. He thought there needed to be a lot more thought put in. They needed to ask what was needed and wanted in certain areas, and where was a certain length acceptable in certain areas. Regarding changes in water, the previous interpretation was that the dock had to be anchored at high water and it couldn't move. Swan Lake went up and down, and these were floating docks that needed to move. The regulations only said how they were measured. The 50-foot length was only measured from high water. It didn't say it had to be anchored at high water. Swan Lake docks were already used such that when the water went down, the dock was moved down. This was an example of one change on the policy side that they needed to change. He thought that answered the question about the changing water.

Roland brought up the effect on navigable waters. He thought that each foot of increased dock length into the water was one foot of public use of the waterway that was removed, so it essentially shrank the circumference of the lake. They needed to take into consideration that as the docks got longer, the boatable area and the public's area got smaller. Janet added they were

also more vulnerable for storm damage and that kind of thing, and for more debris ending up in the lakes after a storm. There were reasons for a maximum dock length.

Roland asked what it meant to say 'approximately 5 feet'. Give or take how much? LaDana explained that wording was already in the regulations. She only changed the '50' to '60' feet. She kept the rest of the wording. The Commissioners requested only the one change.

Jerry wondered with the number of small coves on Flathead Lake, if everybody decided to go from a 50-foot dock to a 60-foot dock whether everybody would be able to have a dock and whether they would have reduced navigability that would make it unsafe. LaDana thought you had to get additional permits over a certain length. Robert said that if you went beyond the low water mark, DNRC had jurisdiction, where you would need to get easements from DNRC in order to do so. Janet mentioned it would be the Tribes in the south part of the lake. Robert noted the County only permitted docks off the reservation. LaDana said for the 60-foot or 70-foot dock they permitted to accommodate a sailboat, this was the case. Jerry asked what this did for the surrounding land owner. LaDana replied the surrounding landowner had a dock that was roughly 90 to 100 feet long. Jerry gave a hypothetical small cove example. Were you creating gridlock with longer docks? LaDana said many existing docks were over the 50-foot length and were already nonconforming. People could repair them a little bit and maintain them, and that was about it. Jerry referred to future docks and the creation of more congestion in coves. Robert said just because you could go 60 feet, it wasn't always appropriate. The landowners and dock builders needed to have an understanding of that area. If you had allowable things, it didn't mean it was appropriate, which should be thought about as they were building their dock. A 50-foot dock in a tiny cove could cause trouble already.

Janet read from #3 on pg. 2 that the proposed action shall not, during either its construction or utilization, interfere with navigation or other lawful recreation. Robert identified that as part of the policy criteria for the issuance of a permit. Janet checked that they would not issue a 60-foot permit for a dock if it was going to interfere with the other docks and navigation. LaDana didn't think they would. When they saw cases like that on a site visit, they would talk to the landowner who wanted the dock if they thought there would be an issue. It wouldn't do the landowner much good to put in a dock that he couldn't use. Jerry voiced concern with the landowner putting in a dock that would affect the rest. LaDana pointed out the Tribe and Flathead County already had the same standard. Part of the point of the lakeshore update was to get a similar standard. Jerry said Lake County had more shoreline than Flathead County, and also had more coves than they did. LaDana asked about the Tribal areas. Jerry said they'd been able to work it out. Could the County work it out the same way? He didn't know how they did that. Janet suggested talking to Jim Westerman about that. Sometimes they made people modify their dock length and make it shorter. If it would interfere with navigation, they didn't always approve them; they made them modify them. The Tribe had a Shoreline Protection Board that met once a month to review applications. Those meetings were open and could be attended, for people who were interested.

For consistency's sake, Janet checked that this was the maximum length. LaDana said it was the standard maximum. Janet said it wouldn't always be allowed, based on circumstances such as

topography. If there were too many docks in a cove and it wouldn't work, the criteria here say that it won't be allowed as she read it. She thought they should approve this.

John F asked if the standards were the same or different for Swan Lake and Flathead Lake. Those two bodies of water acted differently. One was controlled by a dam in such a way that in the heavy time of use, the water stayed at a certain level. In August, Swan Lake was up and down. For the 5 feet at the end of the dock, when was this measured?

Bob K thought staff were saying the Commissioners wanted the 60-foot dock length, which kept coming back, so they were trying to make things more efficient. Would they review [the 5-foot depth] on a per-case basis? Robert replied that as it was, if the dock lacked 5 feet of water depth at the 50 feet point, they could go out further until they reached the 5 feet depth, up to a maximum of 100 feet length. Jerry suggested saying, for example, the mean water depth during the period of use of that lake for recreational purposes, which solved the Swan Lake issue because it was at a totally different time than Flathead, where you could use the average during the season. He knew they weren't going in this direction, but in the future, once you got 5 or 6 feet, that was it. Why should everybody have a 50-foot dock if the purpose was to have depth? In Swan Lake, you measured the average between July and the end of August. Roland checked that Jerry was suggesting an 'and/or' situation for whichever came first: the depth of 5 feet or the length of 60 feet. Jerry said eventually yes. In terms of the mean water depth, Flathead Lake stayed where it was for the summer. Swan Lake started out high in the springtime, stabilized in June and you took the average water depth from July and August. From what John S said, there was a place that measured that consistently over the years in Swan Lake. This wasn't the high water mark or the average between the high and the low.

Roland asked for more information about the 100-foot situation. Robert read from the regulations, which included a description of special circumstances. Roland summarized that the 100-foot maximum applied to exceptions needed for water depth. Robert described that they weren't changing the ability to do [the exception]; they were just saying the maximum length would be extended to 60 feet. They'd been processing variance applications for people with bigger boats. He gave the example of a sailboat, where additional length was needed in order to get the boat in. The Commissioners saw a lot of [the variances] and heard a lot of requests to get this changed.

Bob K touched on the proposed second amendment, which dealt with materials. Janet asked what the Tribal regulations were. Robert said they hadn't been able to talk to Jim Westerman about this. Staff looked through the Tribal regulations and looked under possible words to describe this. They were unable to find discussion of whether or not treated material was allowed. Bob S said the Tribes would not allow docks to be built out of treated wood. They sent a letter that said no treated wood could be used when you got permission. He didn't know why it wasn't found in the regulations. It had to be somewhere because they didn't allow it. Janet suggested it might be in the application. LaDana said they didn't have a chance to ask Jim. The Commissioners thought the Tribes were allowing things that Lake County wasn't allowing.

Bob S reiterated the Tribe did not allow treatment of wood. Robert said to keep in mind that they were not saying that docks should be treated. They were trying to leave some room for

areas where variances had been granted so the procedure would cost less and take less time. They would still have to meet essentially the same standards and the Commissioners would still review it. He didn't think the Commissioners would accept painting or treating a dock. Treating a dock would violate the criteria that they'd been siting.

Bob S checked they were saying a variance was needed if someone wanted to use trex decking. LaDana thought they had. Bob S hadn't seen the request come up at the Tribes. He thought people used it. LaDana said it seemed like some sort of treated material. Bob added it was plastic. Jerry said it wasn't treated, it was just plastic. Robert said that would make it a lumber. Lumber, be it plywood, glue-lam or whatever, was previously considered as treated. They were trying to give wiggle room to interpret it to protect the lake. Jerry said plywood was a manufactured produce that had been treated with glue, which, among other things, could be carcinogenic. Something like trex was mostly plastic. He viewed it as a lumber substitute with some limitations. You couldn't put much vertical weight on it or use it for pillars. Bob S asked for other examples besides trex. People didn't want to build decks out of particleboard. Janet asked about hardiplank. LaDana replied that was like a concrete siding that people asked to use on boathouses. Bob S added it looked like wood. It was a concrete board. LaDana mentioned sometimes paint was baked in so it wouldn't have to be painted. People had wanted that.

LaDana explained people saw things elsewhere and then brought that to staff to ask if they could use it. If it didn't fall neatly into lumber and piling, then it seemed like it could sometimes be a treated material. Then they went through the variance route. It was hard to say whether or not it was really treated or lumber. Janet asked if the EPA had guidance on whether these types of materials off-gassed into the water. Robert said that was the kind of thing they would look into; they were allowing room to examine. Someone would have to come to staff with a proposal of what they wanted to use and bring facts to back up that it wouldn't go against the criteria. Staff would look into that stuff. They couldn't contemplate everything that people might want to use so they were hesitant to restrict to specific things. At the same time, they didn't want to cause destruction of the lake, pollution or nuisance. That was why staff looked at things in terms of these criteria.

Roland suggested changing the verbiage of 'treated'. He knew of someone who was developing heat-treated lumber. It was a thermal change with no chemicals involved. It might be ideal to use in areas where you didn't want contaminated water. By using 'treated', this material would be ruled out. Robert said that right now there wasn't a definition for 'treated' and there was no wiggle-room whatsoever. They were trying to work within what the regulations currently factored in. Roland quipped it was called 'approximately treated'. Robert said they were trying to find something they could work with and review in the same way they already did, without making major changes. Major changes would be for the bigger update.

Bob K confirmed with LaDana that the application asked what materials were proposed for use. Jerry suggested having a list of acceptable materials in the future, with the latitude to add new products as new products were developed. LaDana said if people came in with other things that were an improvement over what had been used and weren't bad for the lake, they wanted to let people use some of those things. They wanted to have the flexibility to be able to do that so they

didn't have to go through the variance hoops every time. Staff still gave it essentially the same review process.

Bob K invited public comment from John Snyder, the member of the public who was present. He'd attended some of the planning sessions for the regulation updates but encountered a conflict with another regularly scheduled meeting. He'd been waiting to comment on various points. Regarding the 50-foot dock length, he saw arguments on both sides. He noted that Tiffany and Janet pointed to consistency with Flathead County and the Tribe. On the other hand, Lincoln County and Missoula County were different. Each county varied. Missoula County was 40 feet. Flathead Conservation District said you could go up to 25 feet and have to prove each foot that you got. In use, the 50-foot was automatic. He was a dock builder. In practice, everyone got 50 feet, and people's pocketbooks would limit that. Most people asked how far they could go out, and they'd take the 50 feet. He guessed that 80 to 85% of people would go to 60 feet automatically if that was the amount. They wanted to get out in the lake. Swan Lake was spoon-shaped. The narrower part of the spoon contained rock bars. They had conflicts given the rule that said you had to be 200 feet out in the lake to have a wake, per Fish and Game regulation. The lake was around 700 or 800 feet wide. In the middle a series of rock bar bumps came out of the water with others just below the surface, waiting to take out boat motors. If you were out 200 feet from shore, the people traveling the other way want to stay away from the rock bar and you got congestion. You were also supposed to be 200 feet away from the other boat as well as the rock bar. The skiers threw in more complication. You only had 300 feet to the rock bar. Do you automatically give 60 feet for the docks, which most people would take? It was only 10 feet but would it cause congestion? That was a tough decision to make. There were arguments on both sides.

Roland asked if the no-wake zone of 200 feet was from the shoreline. What difference did the dock length make? John S replied in practicality, people ignored the 200 feet. They only had from the shore to the rock bar. In several locations this was only about 300'. They didn't want to hit each other or the shore so they squeezed it in and were about 100 feet from shore, and maybe 50 to 100 feet from each other. They were staying away from people's dock but 10 feet would make a little bit of a difference. Jerry said John S was saying people would take the maximum length regardless of how much water depth they had. John S thought 85% would take the maximum automatically.

John S noted he lived on Swan Lake and didn't want bad things to happen. He'd been getting permits since 1997 and noted different staff interpretations made radically different decisions in how to deal with this stuff. He thought a key thing [regarding the proposed change in dock length] was the second half of the sentence that talked about the 5-foot water depth as measured when the lake was at its mean annual high water level. He referred to pg. 19 of the regulations, in the first sentence of 2.a. How you measured that 5 feet seemed critical to him. John F suggested the key was when it was measured and John S agreed. John S suggested changing the wording to say 'during boating season' or 'during August' or something like that, or having a different specification for each lake. Swan Lake water level peaked around late May or June, then dropped 4-plus feet. There was a private gauge station where someone kept track. He referred to a picture submitted with his comments (included in the staff memo).

Bob K asked if you built a dock in the spring, how you would determine what the high water mark would be in August. John S referred to having a mean. He mentioned a shelf. Swan Lake might be steep and then be flat for a while. The water went down, [the docks] went down, then it was flat, then it got steep. He gave an example of a person who had 6 feet at high water and 15 inches at low water. People would suggest to that dock owner that he push his dock out or have another piece built, but he said he could get his boat in. Because of the different shapes of the lake bottom, every situation was different.

Bob K asked how staff determined what the depth for a 50-foot dock would be when the request came in the spring. Robert checked that Bob K was referring to Swan Lake. Bob K clarified that he meant for any of the lakes. Robert said he hadn't worked as much on Swan Lake projects. One thing he'd appreciate was to sit down with John S to understand what John S thought was the way to make that work. Maybe now was a good time. Otherwise, on Flathead Lake, they had to eyeball it. People usually weren't giving them this information. There wasn't an exact science and it wasn't specified how to do it. Staff was open to try to understand how to make this work. Bob K commented that the problem seemed to be that Swan Lake was unique and different from Flathead Lake so the 5-foot item wasn't working. Could this amendment say that this was the ideal but docks on Swan Lake had to be individually reviewed until it's figured out how to deal with it in the regulations? Robert gave the opinion that they had the system in there already. It was staff working cooperatively with applicants and their agents to figure out how to make that case-by-case system work. Bob K said that was fine but he'd seen different [staff] faces every year. He understood the current staff were on board and wanted to work with the public to do this. The Board didn't know that they wouldn't be looking at different faces in 6 months who would have a different philosophy such that John S would be sitting here wondering what to do.

John S brought up an example with Mike Smith. Robert encouraged John S to describe this example of what the staff wanted to avoid. John S described an example of a person who wanted a 75-foot dock in a shallow area. The planner at the time wanted the applicant to prove this so the applicant and agent took soundings every 5 feet, using a tape from the shore and a canoe in the cold. They proposed moving the dock out when the water dropped 4 feet. They showed how water for the dock would be in high water (okay), medium water (really lousy) and lowest water (a little bit better, actually). The planner then said he wasn't there and didn't know if the information was accurate and denied the request. At the end of summer, Mike Smith didn't have enough water so he applied for a variance at additional expense with additional trips to Polson, and finally got the variance. Before that, they'd had really good luck with taking out a boat and taking a look. You could see the bottom and the shelf except when there was runoff.

Bob K asked if John S had a suggestion for dealing with Swan Lake. John S thought they could use either a 50-foot or 60-foot dock length, and then have the homeowner demonstrate something supportive in their application that they didn't have necessary water [depth] during boating season under their boat, or they didn't have 5 or 4 feet. Often 4 feet was plenty unless it was a big boat. Roland didn't think the applicant should present the evidence for the applicant's cause. He thought the County had responsibility to do the investigation as to whether or not there was 5 feet and not put that burden on the party that was biased in their measurement. LaDana noted the applicants submitted applications and were demonstrating this material in their

application. How was this different than what they were doing now? Roland thought that was backwards for process. Bob K confirmed with the planners that they looked at the site before the permit was issued. He suggested having the applicants take pictures so the staff saw the shoreline, and get it approved subject to after-the-fact spot checking. When the water was low in July or August, the planner would come out and spend a day verifying that things were as the applicants said. The permit would be issued temporarily until it had been verified. You wouldn't need a boat; you could just measure the depths. Roland said he'd be curious to do a survey on docks at Swan Lake, say with the 60-foot docks, at two different times of season, measuring the depths at the end of the docks. He thought there'd be more than 5 feet.

John F liked what John S was saying. If the County was serious and held people to it, people wouldn't violate if they really had to take out a dock or shorten it up and then you'd probably get some accuracy. But that required a sense that the County would be serious about it. Bob S asked if that was a problem. Was there a mechanism to go to Swan Lake on a day in August and measure the [water depth at] ends of docks? Robert said not the way the regulations were currently written. This was something that could be looked at and discussed. Bob S said the Tribes went to every site that came in for a request. They went at low water and looked. You couldn't do that on Swan Lake. You could pick a date every year so everybody would know you were coming. If they cheated, they would have a consequence. He thought that was a good idea.

John S said that when he told people they needed a permit, the first question was if the County checked. The County checked before [issuing a permit] but not after. When they asked about Whitefish Lake, he let them know their neighbor would tell on them. He tried to give people accurate information. He wanted everybody permitted. He liked having a set of rules; they were too crowded not to have some rules. He just wanted rules they could live with.

Rick said that flexibility should go at some level to Lake Mary Ronan. They had quite a dip in water level although it wasn't pronounced as Swan Lake. Bob S asked if water level on a certain date was predictable at Lake Mary Ronan, as far as water level on a certain date. Rick replied it was driven by irrigation needs. His impression was that the first number of feet might belong to a family that had it since Moby Dick was a minnow, and so forth. There were dibs on that water. Bob S checked on streams into and outlets from Lake Mary Ronan. Rick said there was an outlet. There were several seasonal streams. The water level was high now and would get higher. Where it dumped in was very marshy. Whether you could argue that 1 inch in muck and cattails was water if you were taking your dock out through that quagmire was another issue.

Bob S said John S changed his mind about the dock length. He had been in favor of voting for the 60-foot dock length but was not going to now. He agreed with John S now. John S said he hadn't said one way or another. He didn't really care. Bob S clarified that what he heard convinced him that if they wanted to go 60 feet or more, they could ask for a variance. Janet suggested that maybe there should be an exception for Swan Lake and Lake Mary Ronan because they were smaller lakes, and have those stay at 50 feet. Bob S said it was a lot different on Swan Lake. They had movable docks there. He'd been on Shoreline Protection with the Tribes for 6 or 7 years. He hadn't seen a floating dock that moved around. They had to move them [on Swan Lake] or they would lose them. He used to have a place on Swan Lake. You pulled your dock up every year in the fall or you'd lose it. That didn't happen in Flathead Lake.

Roland suggested changing the language to dam-controlled waters versus runoff-controlled waters. LaDana noted that Swan Lake had a dam, as did Lake Mary Ronan. Roland thought the dam at Swan Lake had minimal impact. His intent was to have this apply to Flathead Lake. He didn't think enough research had been done to make a decision on all the water bodies. Janet reiterated the lakeshore regulations applied to Flathead Lake, Swan Lake and Lake Mary Ronan. John F repeated he didn't know how you could treat Flathead Lake and Swan Lake the same. No wonder they had so many variances.

Bob S referred back to congestion by docks, which Jerry and John S had mentioned. If you built a new dock with steel pilings, they were incredibly expensive per foot. It was a pocketbook issue for most people. They shouldn't assume that a pocketbook would dictate how long the dock was. Even on Flathead Lake off the reservation, he didn't see a reason for a 60-foot dock unless it was really needed. On Shoreline Protection, they asked people why they wanted to go out. If they didn't have enough water for their boat, sometimes [Shoreline Protection] got a little annoyed when the applicants knew this when they bought the house and then bought a boat that wouldn't fit there; [Shoreline Protection] was supposed to give them a variance, which set precedence. He didn't think they should encourage that kind of stuff. He didn't have a problem with 50 feet even though the Tribe was doing [60 feet] now. 50 feet was plenty. If staff were saying it cost \$450 for someone to ask for ten more feet because it wasn't deep enough at the end of the dock? LaDana answered that the \$300 variance cost was on top of whatever the regular lakeshore fee would be. The last one she did also needed a floodplain permit. By the time all was said and done, it was over \$1200.

Bob S asked why they wanted the variance. LaDana replied so they could get their sailboat in there. Bob S noted that was a boat with a deep draft. Jerry said that's why there were marinas. LaDana said people bought lakefront property and didn't want to trailer their boat to the marina. They wanted to be able to walk outside and use it. Janet mentioned Brad Trosper, a former Board member, didn't want to take his boat to Dayton so he decided to sell it. Some people were reasonable and realized their boat might be too big for their piece of property. Did they really want to accommodate the 'bigger is better' mentality? Jerry didn't think they should accommodate the draft keel sailboats, period. Bob K didn't agree with that. He thought people should be able to buy the kind of boat they wanted. If there was a policy in effect where they could try to get a variance, they could pay for it and do so. Janet said she was asking if they wanted to accommodate every huge watercraft and every location. Bob K didn't think that was the Board's call. Janet thought there was enough wiggle room for exceptions. Exceptions could be made for cases with special circumstances and that docks on Swan Lake could be reviewed on a case-by-case basis.

Bob K wasn't sure the Commissioners had thought through all of the impact of this. Had they considered the concerns on Swan Lake? LaDana didn't know. Staff hadn't received a lot of comments from the Commissioners to go by. Roland thought they needed to find a balance between the decisions for the keeping the quality of the lake and the rights of the owners. Bob S mentioned the option of getting a mooring buoy. You could row out to your boat in a dinghy, like they do in New England. That wouldn't happen too often. There wouldn't be too many big deep-draft sailboats on the lake. He agreed with Bob K to let them come for a variance. They wouldn't vote them down because they didn't like their lifestyle.

LaDana commented that buoys required Planning Board review. The applicants would be paying the cost of a variance or maybe more to ask for that. Robert added the regulations required review by the governing body after Planning Board review. John F could see where a buoy in certain places would be a problem for a lot of people. It was an obstruction and could be a hazard, so he could understand why you'd have to come to a board for a variance for that. They needed to change the regulations if they were having congestion, and this was happening on Swan Lake. He didn't think they needed to change the standards just so someone could avoid asking for a variance. He didn't see a big problem. He didn't think the Commissioner had thought through this. Bob K agreed.

Bob K voiced frustration with the amount of regulation. If a storm on a Thursday night tore boards off your dock in July, you'd have to try to get a permit on Friday to hopefully get a permit to reattach the boards. He thought that was foolish, and thought that was what he heard from the people at a recent meeting, where people felt they'd been treated like a liar or a cheat or like they were trying to scam something through. He thought there was a proliferation of regulations and he thought it was foolish. Roland didn't think they were proposing to regulate the kind of boat someone bought. They were talking about altering public waterways to accommodate a personal decision. Bob K said they could go through the process and if the answer was no, then they wouldn't be allowed to have a 100-foot dock for their big boat. There was a system in place. A person could buy the boat first, and then it was a different problem where they would have to tow it or do something else if they were not allowed to put in a 100-foot dock.

Jerry returned to the example where someone asked for a 60-foot dock because he couldn't put his boat there. He thought it was improper to consider going out to whatever depth was required for a particular boat. Bob K agreed, but thought there were things in place to deal with those contingencies. Jerry asked what depth of water was needed and what water depth was found at 50 and at 60 feet for the boat in the example sited. LaDana thought he was looking for 7 feet. She didn't recall the depth number at 50 feet. Jerry asked if someone wanted a 7-foot depth over at least 20 feet of the dock so they could tie the boat up, if was that acceptable to this group. Did this group have numbers they felt were acceptable? Roland noted if an exception was made and the house was later sold, the new people might have a rowboat and a 60-foot dock that was impeding the public waterway to accommodate an 8-foot rowboat. Jerry asked if The Board was agreed to 5 feet of water depth as a standard acceptable depth. He didn't want the dock to be allowed to go out however far to get 10 feet of water over 20 feet of the dock. That was his concern. If the depth was variable, they could go to 100 feet without limitations.

John F thought that Jerry was thinking more in terms of depth of water in a certain place rather than length of dock. Jerry added out to a maximum length. Swan Lake wasn't the place for a big sailboat. If someone could have a 20' dock with adequate depth of 5 to 6 feet on Swan Lake, why should a 50-foot dock be appropriate for that location? The dock purpose was to get on the boat and go. Bob S said not everyone saw that as the purpose. They liked to hang out there. More people fit on it, and at the dock end, you were closer to the middle where you thought the fish were, even though those might be behind you. He agreed that people would want the longest dock they could afford. He asked if floating docks were cheaper than a built dock. Rick observed that floating docks were not cheap. John S figured \$38 to \$40 per square foot.

Bob S's impression was no one on the Board thought changing was a good idea as far as dock length. With the information presented, Jerry agreed. Roland said there were too many variables. It sounded like someone could still come in and apply for a variance and state their case. LaDana said it could be left as it was. It would just take longer and cost more money. Rick suggested adding a 'common sense' clause.

Sigurd liked the idea for Flathead Lake having the same regulations as Flathead County and the Tribes. Janet mentioned consistency.

Janet mentioned Bob S was the person present with the most experience with the Tribe's lakeshore regulations. What length did most people apply for? Bob S replied whatever was reasonable for them. People rarely asked for the maximum unless they had a little hardship of some kind. They didn't give a variance unless there was a hardship. When someone had a hardship, they really liked it when the applicant narrowed the dock down as it went out. They could see the applicant wasn't trying to build an edifice; they were trying to get out there. He only saw the variance stuff. He didn't see the other stuff. They used to do that, but they were too busy now. If an application met all the qualifications, it was okayed and his board didn't see it. When people wanted to go out further, it was usually granted if they could prove.... His board believed them because the applicants knew [his board] was going to walk around. If it was a real gradual slope to the bottom, he was surprised they could get 3 to 3.5 feet. That was what most people wanted. He thought 5 feet was a little much. The water [in Flathead Lake] stayed pretty high all summer. It wasn't like Swan Lake. Most people whom he saw asked for what they needed. He heard dock were \$40,000. Another ten feet might cost another \$10,000.

John S asked staff if you asked to be flexible for measuring the 5 feet not at high water but when the dock was actually in use, wouldn't that put a stop to forcing a lot of people to come back for variances in Swan Lake? It wouldn't change it at all on Flathead Lake. LaDana didn't know how many variances were granted on Swan Lake. It had been an issue on Flathead Lake. John S thought it was important to recognize that the situation he spoke about on Swan Lake was just Swan Lake. He didn't think what he said should have influence on Flathead Lake or Lake Mary Ronan, if it was more appropriate and staff said they needed this on those lakes to stop a lot of variances. Rick said on Flathead Lake there was a huge surface area. On Lake Mary Ronan, they lost their water too. Bob S said if they were in an area that was gradual, every neighbor would have a dock as long as yours on Flathead Lake, which was full of 100-foot and 60-foot lots. [You and your neighbors would be in the same boat, so to speak]. He couldn't think of a little cove himself. Jerry expressed concern for the 'last kid on the block' who wanted to put in a dock. Bob S understood his point and theoretically agreed, but he'd never seen a cove that small. He was sure there were some.

Janet asked if the Board was deadlocked on this issue of dock length. Someone suggested tabling this. Bob K thought staff should relay to the Commissioners that the Board came up with more questions than answers and didn't feel comfortable with it. LaDana said they could provide the minutes to reflect what kind of discussion occurred.

John F asked if an advisory board could table something. He'd been on the Board a long time and hadn't heard that happen. LaDana thought they'd make a decision. Rick said there was a lack of clarity. Robert recommended that the Board make a recommendation with clearness as to why, to send the Board's message. Roland asked if this meant a motion to table with stipulations as to why they were tabling. Robert clarified that they should make a recommendation. The Board was advising the Commissioners and obviously had concerns. A recommendation might be that they couldn't recommend approval because they had concerns. That would get their message to the Commissioners. John F paraphrased concerns that Roland mentioned: different water bodies and different depths and topographies. LaDana thought that would help. The by-laws said nothing about tabling. It just said the Board was making a recommendation. She read from the by-laws.

Bob K checked informally on the board members' leanings on 60-foot dock length with 5-foot depth and found one in favor. He asked if there was a motion to recommend denial of the 60-foot.

Motion made by Janet Camel, and seconded by Rick Cothorn, to recommend denial of the proposal [for the 60-foot dock length] of amendment #1 due to the need for:

- **more information**
- **more discussion with the Tribal Shoreline Protection Office**
- **more work on Swan Lake for some additional language for this amendment**
- **differentiating the bodies of water, with the differentiating to include Lake Mary Ronan.**

Motion carried, 7 in favor (Bob Kormann, Janet Camel, Jerry d'Aquin, Rick Cothorn, Roland Godan, Bob Stone, John Fleming) and one opposed (Sigurd Jensen).

Discussion focused on amendment #2 regarding materials. Janet asked if the EPA had approved materials. John S said he contacted the EPA, who said DEQ had jurisdiction. The rules and regulations pertained to parts per million of bad stuff in the water. He'd forwarded some information to LaDana. People were allowed to have stuff that was untreated unless someone proved that a particular treatment (trex or whatever) sitting in the water emitted less than 3 parts per million. To approve a variance, you would have to get the research results from a scientific lab. His take was biased by his past history. He couldn't imagine an individual homeowner getting a lab to do the parts per million research, and he didn't think the County had the money to test composites. There were 3 broad categories: wood (and slightly changed wood like plywood), composites (wood chips and resins pushed together under pressure) and plastic. There might be a metal or concrete surface.

John S gave an example where someone was staining a dock. He had gotten multiple requests from concerned people to call the County. He finally called Tiffany (former planner). Tiffany called the person, then called John S back and relayed that the person said they weren't staining. It was a long drive to Swan Lake.

Roland asked if John S would consider plastic decking as lumber in this wording. John S answered no. Roland suggested changing the wording to 'all pilings and building materials'. He thought the word 'untreated' was too broad. There would need to be some type of verbiage such

as ‘that would not adversely affect the water quality’. Then that went back to whether it needed to be proven. If there was no list of approved materials, they didn’t want people guessing as to what was considered a safe material. Jerry said surely someone in the US had tested trex. Was there a US dock builders association that provided that kind of information?

John S thought this was a good point. It could be left the way it was with the addition that exceptions must meet certification as determined by the Planning staff. Over time, a list of tested materials could be put together. He’d been using plastic decking designed specifically for docks because it was safe and lasted a long time. He never considered whether something would leach into the water. Now he thought he better call and see if it had been tested. It was UV stable. He thought there was a high probability that the plastics manufactured by huge companies had been tested.

Jerry asked if John S could talk to that particular manufacturer. John S said he’d call to see if there’d been leakage into the water. Salt water would be different than fresh water. Janet said you had to make sure the company hadn’t done the testing. John F brought up when you were sawing those products, you were putting that sawdust in the lake. Did that have an impact? John S said that he manufactured outside of the lake. They drilled their holes and blew everything off beforehand. Their trailer entered different lakes so after each lake they power washed the bottom.

Bob K asked if it would be easy for the Lake County Planning Dept. to contact the planning department in Brainerd, MN, where there were 10,000 lakes, and see if they had regulations on building materials for docks. LaDana said they could do that. She noted since Tiffany was familiar with Wisconsin, she’d typically checked there. Bob K agreed that was the same deal. Janet asked what Shoreline Protection had. Bob S answered they said no treated lumber period. Janet asked about trex. Bob S hadn’t heard it come up although he saw it all over. He guessed it was legal. After a storm, he’d also seen the trex all bent up in Woods Bay. He didn’t think he’d want that. John S said he wouldn’t put trex on anything but that was a personal decision. Bob S said in the meantime, it was a good idea to have the staff make some calls and see what people were doing around the country on fresh water. The other thing was to make a simple sentence where things that weren’t wood products had to meet certain standards with a vague mention of EPA standards or whatever was wanted. It was up to the person who wanted to use something else to show the evidence. In the meantime, they could get some other agency’s time-tested rules that were vague enough to continue to work as new products came into play. That was a one-sentence thing.

Some board members discussed the term ‘treated’. LaDana noted part of the problem was no definition for ‘treated’ existed in the lakeshore regulations right now.

John F liked that the current regulations required pilings and lumber be left untreated. That wasn’t going away. The amendment would allow exceptions to be made on a case-by-case basis. He didn’t think they should make an exception to treating and he thought that was what this said; he was concerned about that. They would have some flexibility to use some different products as they came down the road. Citizens needed to have access to the wonders of science; the board just wasn’t sure which to allow.

Bob S agreed completely. It bothered him that it sounded like they would let people use treated wood if they had a good reason for it or if they had a new kind of treatment. Furthermore, he didn't know what 'a natural state' meant. How about just a period after 'untreated'? After the period they could say, 'Any other materials must be proven to not harm our lakes.' Jerry and Janet said that 5.1.A on pg. 2 already contained this, where it said it could not materially diminish water quality. Bob S reworded his suggestion so that after the period you could say, "Any other materials must conform to 5.1.A." LaDana said that was essentially the last part of the sentence. Jerry suggested 'case-by-case basis subject to alternate materials complying with policy criteria.' John F said just so long as they didn't change the 'treated' and gave themselves a little more flexibility. Roland liked the idea of taking out 'natural state' because it was so [inaudible] a term.

Motion made by Janet Camel, and seconded by John Fleming and Sigurd Jensen, to recommend amended language for section 5-2(F) to read:

All pilings and lumber used within the Lakeshore Protection zone shall be left untreated. Exceptions to this requirement may be made on a case by case basis subject to alternate materials complying with the policy criteria for issuance of a permit addressed in section 5-1(A).

Bob S noted they weren't including Bob K's suggestion to get some proof that this stuff would not materially diminish water quality. If people wanted to use some new product, they wanted to know that it wouldn't hurt the lake. Jerry thought the part about 'complying with the policy criteria' took care of that. LaDana said someone would submit information to demonstrate that they complied with the policy criteria. Bob S thought that would do it.

Motion carried, all in favor.

Bob K checked with John S to see if he felt like he was heard. John S appreciated the dynamics and thought the people on the Planning Board were thinking and listening. The Board thanked him for making the drive and for his insights and help.

OTHER BUSINESS (8:52)

Potential other business for next month was discussed, and a new planner, Matt Ellermann, was introduced welcomed. Bob touched on last month's meeting with ensuing discussion.

Motion made by Rick Cothorn, and seconded by Sigurd Jensen, to adjourn. Motion carried, all in favor. Meeting adjourned at 9:08 pm.