

**LAKE COUNTY PLANNING BOARD**  
**August 12, 2015**  
**Lake County Courthouse, Large Conference Room (Rm 316)**  
**Meeting Minutes**

**MEMBERS PRESENT:** Steve Rosso, John Fleming, Sigurd Jensen, Janet Camel, Rick Cothorn, Roland Godan, Bob Stone, Steve Shapero

**STAFF PRESENT:** LaDana Hintz, Robert Costa, Jacob Feistner, Lita Fonda

Steve Rosso, vice chair, called the meeting to order at 7:00pm.

Janet offered the following corrections to the draft minutes from July 8, 2015:

Pg. 1, second to last paragraph, second sentence from the end: 'update' became 'corrections' and 'was now' became 'had always been'.

Pg. 3, 4<sup>th</sup> paragraph, first line: 'eh' became 'the'.

Pg. 7, 2<sup>nd</sup> paragraph, first line: 'the scrapped' became 'then scrapped'.

Pg. 11, first paragraph, line 2: 'saw' became 'heard'.

Pg. 11, 2<sup>nd</sup> paragraph: 'Janet wanted' became 'The Tribes wanted'.

Pg. 11, 3<sup>rd</sup> paragraph: In line 4, 'telling them what' became 'saying that'. The full sentence that began line 5 was eliminated. In line 6, 'they didn't grow ten times as fast' became 'their population didn't grow ten times as fast as the non-Tribal population'. In line 10, 'spend' became 'spent'. In line 13, 'them to be saying' became 'the County to be saying'.

Pg. 11, 4<sup>th</sup> paragraph: In line 3, 'meetings were' became 'meetings where'. In line 5, 'understand' became 'have to follow'. In line 6 'that were mutually agreed upon' was added after 'these regulations'.

Pg. 11, last line: 'non-Indian and' was added after 'the majority of'.

Pg. 12, last paragraph: In line 2, 'areas' became 'area'. In line 3, 'stop doing in' became 'stop doing it'. In lines 7 and 8, the sentence of 'They had an easement along both ends of the 80' became 'They had easements along both ends of the 80 for farm access.'

Pg. 13, first paragraph: In line 2, 'you'd take' became 'you could take'. In line 3, 'if necessary' was added after 'the DMR'.

Steve R offered the following corrections to the minutes:

Pg. 1, last paragraph, 3<sup>rd</sup> line from the end: 'confident' became 'confidence'.

Pg. 4, first line: 'send' became 'sent'.

Pg. 6, first line: 'recoding' became 'recording'.

Pg. 8, 3<sup>rd</sup> paragraph, 7<sup>th</sup> line from the end: 'different' became 'difference'.

Pg. 12, first paragraph, 4<sup>th</sup> line: 'needed to something' became 'needed to do something'.

Pg. 13, last paragraph: In the 5<sup>th</sup> line, 'recordation' became 'recording' and in the 8<sup>th</sup> line, 'these wasn't' became 'there wasn't'.

**Motion by Sigurd Jensen, and seconded by Rick Cothorn, to approve the July 8, 2015 meeting minutes as amended. Motion carried, six in favor (Steve Rosso, John Fleming,**

**Sigurd Jensen, Janet Camel, Rick Cothorn, Steve Shapero) and two abstentions (Roland Godan, Bob Stone).**

**MC CLAIN LAKESHORE VARIANCES (7:10 pm)**

Jacob Feistner introduced the applicants, Brad and Melody McClain and presented the staff report. (See attachments to minutes in the August 2015 meeting file for staff report.) He mentioned the McClains purchased the property in 2014. The nonconforming structures had been there a long time before the McClains. At the top of pg. 7 of the staff report, Jacob struck the first full sentence and the following word of ‘however’.

Steve R asked if regulations in section 5-3(A)(2)(h) listed on pg. 3 meant that if boat access was not required that there was no setback limit. Jacob explained the Planning Dept consistently applied that it was 25 feet to the riparian boundary line from either side of the dock. Even though this was an H-shaped dock and access would be primarily from the end of the dock, they still applied the setback.

Steve R verified with staff that the lakeshore regulations had been amended to allow for 60-foot long docks but that the location of the boat storage cover had not been amended so the roof couldn’t go to the end anymore. That seemed like an oversight to him. On the proposed staff alternatives, the south setback was mentioned at 15-feet. He confirmed with Jacob that the staff alternatives would require at least that variance. Jacob said he assumed the boat ramp stayed.

Roland referred to the comment that the new construction would be an improvement over the old one even though the size required variances. The variances were established for numerous other reasons that had nothing to do with construction quality. They had more to do with aesthetics and infringement on public water ways. He didn’t think they should construction quality as a justification for the variance. Jacob replied that what he meant by that was the newer one would be more compliant than the one that was there. Roland said especially for the variances that allowed a larger structure to be built, he didn’t like using what was existing as a justification for allowing something else to be done. That was why they kept reforming these laws to improve conservation of natural resources. He said to forget what the old one did; what did the new one do? He used this in the decision-making process, and recognized that every foot for which they allowed a private property owner, the entire public loses that foot.

Janet checked that this was off the reservation, which Jacob confirmed.

Bob S asked if a crib dock without flow-through currently existed. Jacob identified that it was currently a wood piling dock. LaDana referred to the pictures in attachment 5 for what the dock looked like right now.

John asked if the variance criteria had been put in. LaDana pointed to pg. 6 for the Board’s main review. The only thing the Board was looking at tonight was whether the project met these criteria.

Melody McClain introduced Brad and herself and spoke on behalf of their application. She reiterated this was purchased in Sept. 2014. She understood what Roland said about not

comparing new to justify variances. From their viewpoint, it was hard not to do that. They loved their existing dock, which was well oversized. It was in need of repair. The neighbors would probably agree it was an eyesore. The surrounding tires weren't super-nice to look at. It needed work. They could repair and maintain it. Recognizing that would be a multi-year project, they would be fixing portions at a time. This wasn't the first choice for the neighbors or themselves. This would further disrupt the lakeshore with multiple construction projects over a number of years. They looked for an alternative they could do without giving up too much of the square footage that they had. This was the proposal in front of the Board. It reduced the square footage by about 900 square feet. This was significant to them but they saw nice offsets as well. First, it got it off the property line and moved it to the middle of the lot. Second, the current roof coverage was big and would be reduced significantly. Third, they could get a barge to take it out and rebuild in one season for minimal disruption. It was hard to give up having such a big dock. They decided to move forward with the proposal in front of the Board. It was larger than would be conforming for a 75-foot lot but they felt it was closer to conformity and was an improvement. It seemed like a decent compromise.

Janet asked the applicants if it would be a hardship to go with one of the staff recommendations. They could still use their dock and have a covered area for their boat. Melody thought that depended on the definition of hardship. They would still have a useable dock. It wouldn't be a dock that was big enough to enjoy the way that they would like to enjoy it. The existing dock they had was almost 2000 square feet. Brad commented they'd considered a number of different plans before they arrived at this one. They tried to get the impervious coverage down as much as they could yet still have something resembling what they had. Melody gave an example of a walkway that was narrowed from 12 feet to 4 feet.

Roland asked if H-dock design allowed direct pull-in while the F-dock design looked more awkward and maritime-wise, if the F design would better protect a boat. Brad and Melody answered that the F-dock would come a little close to the northern neighbors.

Steve R asked if vertical batter boards would be around the outside of the dock to stop waves. Brad said currently there were some. He thought they had to be 3 feet off the lake so they were just going to have some at the top on the west side. Steve R commented that one reason to restrict coverage over the water was because shading of the lake bottom changed the environment and affected what living organisms thrived or failed to thrive. If water was allowed to pass through, that would be minimized. If the applicants had a boat lift there, they might consider lifting the boat out of the water. If the boat wasn't at risk of being battered by waves, they might consider leaving the batter boards off of the dock. That might mitigate some of the issues of large coverage over the water. Brad said that was something they'd be willing to do. Steve R said to eliminate a variance, they could pull the dock in so the edge of the boat cover would be at 50 feet and would still be at the end of the dock. The 4-foot wide walkway out to this H area would be shortened. He asked about the water depth at 50 feet versus 60 feet. Brad replied they were showing 4 feet currently at the 50-foot location. It was an oversight not to go to 60 feet. He didn't know about that variance until the report showed up. They wanted to maintain the 60 feet because of the depth. Steve R mentioned the lakeshore regulations had an allowance for longer docks that didn't have a good water depth. Jacob said an exception could be made for the dock length if they didn't have 5 feet. LaDana noted that they had to work

within the other confines with that, such as impervious surface coverage. Steve R observed the bay was shallow and having the boat and boat cover at the end would be a reasonable thing to ask for. Roland asked if the 5 feet was at full pool. Someone said this year would be less.

*Public comment opened:*

Lynn Weaver said he lived directly across the bay from Brad. The dock was big. He realized that legally, Brad could repair and maintain that dock as it was. He thought trade-offs were important, and Brad was trying to decrease the size of this dock by close to 50%. It was a reasonable thing for Brad to do, and Lynn would much rather see that than repair and maintenance of the old dock. It made a lot of common sense to allow Brad to do that. Lynn knew there were variances involved. It would be much better than the existing dock. He would like to see the Board approve the new dock.

Don Carlson said he lived three houses to the north. He agreed with what Lynn said. The existing dock was a complete eyesore. There were approximately 100 tires in the water, and the weathering couldn't be good for the water. He thought that would be removed with this approval, and that the proposal would be a plus to their area, not only for the neighbors but for those using the drive around the lake.

Brent Zubot said he lived across the bay. He was in full support of the McClain's proposal for cutting back the size of the dock. He thought what they proposed was a great compromise. Regarding Roland's comment about how a variance took away from the public, this would reduce 2000 square feet to 1000 square feet, and that would be 1000 square feet to which the public would now have access. The public did win on this reduction. He'd spoken to other people in the bay who were in full support of the dock being reduced.

*Public comment closed.*

Roland agreed that what the applicants proposed was a significant reduction in the private footprint. He had been trying to explain that these regulations were a futuristic view of what they want it to look like down the road, not biased by what was here now. Eventually that dock would tip over and go away. That was when the new rules would kick in. He agreed with the eyesore part. It reminded him of a small town in the Philippines.

Steve R mentioned picking one of the staff alternatives would save money over choosing to maintain or repair the existing dock over several seasons and would probably save money over the current proposal. He checked with the applicants that this wasn't enough incentive to pick one of the alternatives if the proposed new dock wasn't approved. Melody said they would keep the size and shape of the dock they had. If the proposed dock was approved, they'd like to build it out of nice materials. They could afford to build a nice dock. If they did repair and maintenance, they would make it as nice as they could. It would be more expensive. They would rather keep the square footage and not be able to make it as fancy or nice as they might be able to if they were able to go with the proposed plan. Brad said to repair and maintain would save them money. The northern part of the dock was in pretty good shape. They would have to repair portions of the southern part. To do that wouldn't be much capital. Rick said with current

statutes, no leverage existed to make them do other than maintain and keep that dock if he understood correctly. LaDana said they could repair and maintain it. They could use it as it was or build in compliance with the regulations. If variances were granted, they could get variances.

Bob S checked that [on the staff alternatives] the most width he saw was 6 feet in the proposed diagrams and also 8 feet. Jacob said that one was exactly the square footage that was allowed. If they were to choose that one, they would have to get some sort of boat lift with a canopy if they wanted a cover over the boat. It was the dock only. Bob said when he looked at the existing dock, he didn't see as many flaws as he would if he stood there. It looked like a great place to relax and he understood the applicants' decision. Twenty three feet was really big. He had a few decks at his house that were 12 feet and that was a nice size. You could enjoy yourself there.

Steve R asked how close the neighbors' docks were to the McClains' riparian boundary. Brad estimated the northern one was about 25 feet away in the center of a 75-foot lot, and maybe 25' to the southern one. Robert noted the dock to the north was similar in that it was an old crib dock built long ago. It was most recently repaired and maintained. Bob observed the diagram of the proposed dock showed a huge overhang of the roof. Most boat damage was from sun rather than rain. Had they decreased the width of the overhang so they protected the boat from the sun without the excess? Brad said they realized in the last few days that the proposed boat slip wasn't very deep. It was probably too late to propose this but he shared a drawing with the proposed dock and roof. (See attachments to minutes in the August 2015 meeting file for handout.) Bob asked what time of day that [location] got sun. Brad thought probably 10am. He indicated water depths and where he could bring the boat in so it wasn't sticking out in the sun. The impervious coverage was the same. It just changed the shape of the dock. He pointed out where something went down to 6 feet from 8 feet.

Melody asked if per the regulations, did the Board care how much the [cover] overhung where the dock already was, since shade on the lake wasn't increased. LaDana said that made sense but there was a standard for how much the boathouse could cover. Jacob said the 40% didn't say 'over the water'. It talked about the complete size. When staff calculated the surface, they only calculated what was over the water for the total coverage. Steve R checked that the 600 square feet allowed in this case was for the dock and boat cover combined. Jacob confirmed that was the total. Steve checked that 40% of the total was used for the roof, which reduced the amount allowed for the dock to 60%.

Roland asked how many pieces of a dock could be replaced before it was considered rebuilding a new dock. Jacob pointed to section 5.4, which addressed nonconforming structures and said you could replace up to 50% of its real value in one year.

Sigurd noted this proposal [in the handout Brad had just shared] was a little less. Jacob pointed out the staff report was based on the plan proposed with the report.

Janet asked if the alternative staff options still needed variance #1 for the L-dock for the boat shelter. Jacob responded that one would be compliant, being 4 feet under what was allowed. He had it drawn at 15 feet but it could move over and be compliant. Janet asked if the other options needed variance #1. Jacob said dock #2 would need a variance from the setback. Dock #3

would need a variance for coverage and for the boat shelter. These would be minimal variances but they would still need variances. The same was true with #4. That one brought the boat shelter inside the 50 feet but it still exceeded coverage. Roland pointed out a typo in variance #4 (pg. 4). Jacob corrected this from 'would he boat' to 'would allow the boat'.

Steve R said he could see approving the variances. He would like to add something to say that one alternative was to allow the existing dock and boat shelter to be repaired and maintained, continuing extensive impacts to the public and the environment. A compromise including some variances would reduce these impacts. He thought that was a legitimate finding of fact and would justify approval of the variances if the Board wanted to approve them. He didn't know where this would fit. LaDana clarified that the Board wasn't approving the variances and lacked that authority. The Board was going through the policy criteria, and determining if it complied with the policy criteria. They weren't recommending approval of the variances. Brad thought the Commissioners wanted to see what the Planning Board's thoughts were on this. LaDana clarified that the Planning Board didn't have the authority to approve variances or lakeshore permits, nor did Planning staff. The Commissioners had that authority.

Rick agreed. The Board wasn't trying to usurp that. He pointed out the variances had public support. Staff were very good. The applicants seemed reasonable. He saw a resolution coming easily. LaDana clarified that the Board wasn't approving the variances. She didn't want them to put that in their finding because they didn't have the authority. They needed to make sure they were addressing the policy criteria. She pointed to what was written in the conclusion (pg.8) of what they were supposed to find.

Roland thought that technically speaking, it was negatively affecting the policy criteria because the wording was vague. This dock would impact certain things. What the Board members were saying was that the tradeoff there was the improvement that the new dock would make over the old one, with the probability that if not granted, a negative impact would continue on the lake. Steve R rephrased as a larger negative impact. Roland said technically speaking, the Commissioners couldn't grant a variance by the letter of the law, based on hard facts. They had authority if from a practical standpoint, it should be granted. Steve R said that although the proposed dock materially diminished water quality, so did any dock. If the applicant didn't get these variances approved and stayed with the existing dock size, they had more diminished water quality than they'd have if the variances were approved by the Commissioners. It looked like a compromise was what was recommended here. Sigurd said if nobody compromised the current dock would remain.

Janet voiced a concern whether they were opening a can of worms if other people came in and wanted variances. Rick pointed to a 50% improvement in circumstances. Janet referred to cumulative effects. She thought these applicants were trying to come up with a good compromise. In the future as other people came in for variances, were they negating the intent of the regulations? Steve R said the only cases that brought this situation were the grandfathered ones. Someone who came in and wanted to build a new dock without having a grandfathered design would be pushed to meet the regulations. Where a grandfathered dock seriously affected water quality, navigation by the neighbors and the view shed from other properties, from the public around the lake and from the water, granting variances to get rid of the grandfathered

design was a worthwhile compromise. Janet asked staff if they were concerned this could open up a can of worms for other nonconforming docks. Jacob said it was something to consider, especially in this area where there had been variance requests in the past for docks that maybe shouldn't have been. He personally felt they also had to look at these case by case and evaluate each one as it was. It was good to compare but they couldn't always make a decision based on a comparison.

Rick asked how many dock variances had been requested this year. Jacob replied very few. LaDana couldn't say. People asked for variances on common things. The majority didn't go to the Board. The Board did need to be concerned about it. They had regulations and the intent of grandfathering was that over time, these things would go away. In this case, this would probably never go away or come into compliance. If they were fine with this and could make findings to support this, that was great. When the next person came in, their case would be looked at too. There was also a precedent set with the decision that the next person would look at too, and want to know why he couldn't do it. When they were making a decision, they should keep that in mind.

Sigurd asked if they hadn't often compromised. Robert asked what he meant by compromised. Sigurd replied getting a better dock that was nearer the regulations. Brad said along those lines, if most people reduced their current dock size by 50% that would bring them into compliance. They were setting a precedent by going down 50% with their nonconforming dock. LaDana thought Roland made a good point in asking if this would be done for everybody. Roland said it was case by case. He brought that up because he liked to use it as an overall guide. LaDana said this had become an issue, particularly right now at Lake Mary Ronan. They had people who wanted 185-foot long docks. The McClains weren't asking for that. People came through the door, and how did [staff] justify that they couldn't have this when they reported having only 2 or 3 feet of water? This year was an unusual year in a drought situation. Everybody was feeling the stress of the drought situation. You had to keep that in mind too. The applicants may have 4 feet of water right now but it was an unusual year. Roland addressed the question that if someone else came in and wanted a variance with the thought that every case was unique. The chances of somebody coming in with this exact scenario and requesting exactly these variances were zero. They needed to be able to argue their thoughts with a future applicant by stating what was unique about this case versus whatever else might come in.

John pointed to the wording 'materially diminishes water quality'. Did they have the science to measure that? It was simpler not to grant variances and he'd rather not do it. It did seem like it was reasonable in this case. He wasn't sure if it had been shown to him that the new design was material. He would try to approach it in that way. The word was there; they should use it. He didn't know that he knew it materially diminished water quality. He liked this dock better than the one they already had. He also thought they should probably take advantage of this one if they had the option.

Rick asked if the version on the handout moved closer to some of the staff alternatives. Jacob said it decreased the dock's impervious surface coverage a little. At the same time, it increased the boat coverage, so as Brad said, they had the same total impervious surface coverage. One adjustment that would have to be made was now the roof would make up a larger percentage. It

already slightly exceeded 40% so now it would exceed that a little bit more. They could decide if that was important or not. Total coverage stayed the same. Janet asked what the neighbor on the other side thought of the proposal. Brad said he'd talked to Todd a few times via phone and text and he was in favor of this. He didn't live here and hadn't been here this summer so it was trickier for Brad to get a letter from him. Brad said the neighbor would be more than willing to sign one. The neighbor had been all right with the F-dock but liked the proposed one more.

Janet said when you looked just at the criteria given for the Board to examine, the proposal seemed to lessen the impact as far as these criteria. They could keep the nonconforming dock the way it was. The applicants were proposing to reduce it by half. She hated to set a precedent with variances, although it would be the Commissioners rather than the Board would be doing so. Just by looking at these six criteria, she thought they were making things better rather than worse. Jacob commented that the criteria were written comparing the proposed dock to a conforming dock, not to the existing dock. That was why they each stated it could materially affect these things: it compared the proposed to the conforming. Roland said in that black-and-white world, there was no way to not have an impact unless you went with a regulation dock. Technically speaking, this dock wouldn't conform, if that was the direction they went. LaDana said that was the way the regulations were actually written up. A standard was put in place that was considered by those at that time as what would be accepted. There were impacts to water quality and things that would happen as a result. You were putting something over the water and you were going to have an impact. At this point, it was up to the Board to determine if the impact would be more than what was already there and if they still upheld the regulations when they made their findings on what the policy criteria was, now. Staff came up with some policy criteria that the Board could modify to what they wanted them to be. That would go forward to the Commissioners as their recommendation.

Steve R said another experience he was using to justify this was his experience on the Board of Adjustment (BOA). They often approved variances and conditional uses with staff's recommendation when a nonconforming use became more conforming even though it still wasn't conforming, thus reducing the degree of nonconformity. That was a plus. He saw that happening here. It was a good thing to have something in these policy criteria evaluations (in italics in the report) that pointed out the fact that the likely alternative to consider would be repairing and maintaining the existing dock, not a conforming dock. Then you saw the new design improved water quality, habitat and navigation. It lessened the public nuisance and improved the visual impact. When compared to the alternative of keeping the old dock, he thought this could be justified with findings that did that, rather than to compare it to a totally conforming dock.

John offered to attempt a motion. LaDana said if they were going to do that, they needed to make findings. When staff reviewed this, they had to review it for compliance with the regulations. They took it forward to the Commissioners and showed the proposed designed. The Commissioners said they wanted the Planning Board to weigh in. The findings and so forth were based on what staff were saying so the Board needed to modify those. Steve R asked if LaDana could recommend to the Board where they would put something like the paragraph he suggested. Rick thought it might be of future benefit if someone tried to throw another circumstance at the Board, so the Board could say they weren't meeting the improvement level that was met in this

circumstance. John thought the minutes of the conversation made that very clear. The Board was comparing the proposal and the existing dock. He agreed they should do that. Rick hoped the members of the public and the McClains understood their confidence in the staff and that they appreciated the staff efforts, and that strict compliance and following regulations had a time and place. Robert answered Steve's question that it should probably be in both the summary statement at the end and at the beginning, and in the findings. It didn't have to be complicated in the findings.

Steve R suggested changes to the criteria in A.1 on pg. 6. Janet suggested *keeping the first sentence of each criteria and then say, "However, the proposed alternative, in comparison to the existing grandfathered use, decreases the current impact."* A Board member suggested adding substantially. Janet said they could add significantly or say it decreased the current impact by 50%. Bob S thought that would help when people dug through this later, fishing for precedence. There weren't many docks with this kind of square footage on the lake. Steve R thought someone could go through the italicized paragraphs later and make sure they were consistent. The last sentences could also be a problem because they talked about a conforming design

John said you'd have to say something like in #3 that the impacts could be FURTHER reduced. They didn't choose that option. LaDana asked if what Steve R was trying to get at was that the impacts were decreased on all of these compared to what was there. He affirmed. LaDana said they could go through those and modify them. At some point this would have to get into a form for the lakeshore permit. This would be modified and put in other documents. Roland thought they got back to what was the spirit of the law. The specifications that existed were a cookie cutter for a complex ecosystem that weren't always usable down to the period for every situation. He didn't have a problem with variances.

Bob S said there were also problems with the way lakes got developed. Developers cut waterfront lots so small you couldn't put a dock in. He thought the 25-foot distance might be dependent on how skinny the lots were made when they were developed in the '20's. We lived with that today. He knew the applicants loved their 75-foot lot but they had neighbors pretty close at 75 feet. Roland said if they were worried about impact, they could force them to do a dock per specifications and the owners could have a lot more parties with a lot more boats on the smaller dock. Steve R said there were people who were told they couldn't have a larger dock who then bought a pontoon boat to park at the dock to make it bigger.

Bob S referred to flowering rush, an invasive species that could take over. His parked boat had flowering rush around it but not underneath it. The shade killed it. Most of the creeks that were healthy in Montana were totally shaded. Shade wasn't always bad. He liked variety.

Steve R mentioned to the applicants that they could consider whether or not they really needed the batter boards around the dock. Having the water flow freely under the dock did a lot of [good] things. If the applicants had a lot of ponderosa pines, the pollen collected, especially behind those batter board docks. It would be washed over to the neighbors if the dock was open. Melody said she understood why those rules were in place. She was for following rules. Having said that, this was a significant improvement from what was there. It didn't negate the need for rules.

Steve R asked if they needed a motion to make a recommendation to the Commissioners. Jacob asked for clarity on which dock the Board was making a recommendation. Rick asked about leanings regarding the plans. Brad said he brought his [new alternative drawing] tonight to ask what process he'd have to go through if that was the plan he wanted. He wanted the Board to have a look at it. It was a small change. LaDana said it wasn't fair for staff to have to choose between the plans, having just received one tonight. They hadn't had time to look at it for compliance with the regulations. Rick clarified that he was looking for empowerment and guidance as opposed to putting staff in a box, if the staff had an idea. LaDana explained they hadn't had a chance to look at them. Roland thought they couldn't present the plan without the public input that the staff report packets allowed. LaDana noted that plan hadn't been available for the public to look at if they walked through the door. LaDana affirmed for Bob S that the Commissioner meetings were public. Bob asked if they were in a position to look at a small change like this at that time. They were the ones who actually granted the variance. LaDana thought that was a possibility. The Commissioners asked the Planning Board to look at the policy criteria and the Board had done that and was about to make some decision on it. She suggested leaving this design up to the Commissioners to determine. Bob clarified he was asking for the McClains. LaDana explained this would come forward as part of the staff report [for the Commissioners]. As long as it didn't change the Planning Board's policy criteria, it wouldn't really impact the Planning Board decision.

Given a variance for more impervious surface for a dock, when the allowable size for the shelter roof was calculated, Steve R asked if it would be 40% of the dock size that was allowed or 40% of the conforming dock size. This might affect how many variances were needed. Jacob specified that Steve was saying 40% of 960 instead of 40% of 600. Steve R suggested this be considered when the staff report was done.

**Motion made by Steve Rosso, and seconded by Steve Shapero, to recommend that the proposed dock meets the policy criteria with the changes that the Planning Board recommended in the policy criteria. Motion carried, all in favor.**

The Planning Board members clarified that staff would make the changes in the policy criteria based on the Planning Board's general concept.

Brad checked about the drawing he brought tonight. LaDana explained it wasn't fair to present something to the Board when they didn't really have a chance to look at it. It wouldn't change the Board's decision, which they were able to make based on the plan they had. Staff would work with the Commissioners to bring the other plan forward.

#### **OTHER BUSINESS (8:35 pm)**

Commissioner Gale Decker spoke to the Planning Board. He commented on the parallels between the Planning Board discussion and the Commissioner discussion on the lakeshore item. He took away the idea that the process worked.

Gale shared a letter from the Commissioners for the Planning Board members regarding review of the Density Map and Regulations (DMR). (See attachments to minutes in the August 2015

meeting file for letter.) On behalf of the Commissioners, Gale said in hindsight, they should have involved this Board at a much earlier time. The DMR had been in effect for 10 years and had not been reviewed. The Commissioners regularly heard a lot of comment for a long time wondering when review would occur. They moved this to the top of their priority list, as the 10-year anniversary of the adoption came up in October. They had a 10-year body of work with the DMR to see what issues came up, including legal issues. It wasn't a huge document. The Commissioners listed bullet points to highlight what they saw as parts of the DMR they would like the Planning Board and the public to address. The Commissioners asked Mark Russell (then County attorney) to look at the DMR from a legal perspective. He thought LaDana was handing out the DMR with Mark's comments and highlights. (See attachments to minutes in the August 2015 meeting file for annotated document.)

LaDana explained that she and Mark went through the document and tried to figure out what was being thought by those who came up with the document in 2005. Then they tried to figure out if it worked or not. The notes on the document were from the discussions between Mark and LaDana. She pointed out that they would see a lot of land use type items in there. The regulations specified they were null and void if land uses were included.

Gale described that LaDana also put together a packet of the public hearings and Planning Board meeting minutes during the adoption of the DMR. The Commissioners went through this thoroughly for a good look back at the situation in the County at the time the DMR were adopted and what the Commissioners were attempting to do at that time. There had been a lot of changes in the County as far as land use in the past 10 years.

LaDana handed out a second document. (See attachments to minutes in the August 2015 meeting file for second handout.) This handout from March, 2014 pointed out items from the DMR that had been issues in the past. She thought this might be useful to provide again. She highlighted in the Commissioner letter handout that they would like the Planning Board to provide comments to the Commissioners by Oct. 31. It left a very small timeline. She asked the Board if they would like to have some special meetings to make this happen. A few extra meetings were possible as well as the upcoming Planning Board meetings. The next regularly scheduled meeting was Sept. 9. It was up to the Board what they would like those work sessions to be.

Bob S thought it would be helpful to hear from people who had knowledge or stories about the DMR. He was in favor of cluster housing but didn't know whether they were getting it or not with the DMR. Was there a way they could get input, raw material, for their meeting in that way? LaDana said she needed to know from the Board what they would like staff to provide. They would have to pull together some of this stuff.

Bob's fear was they would hear from the squeaky wheels who hated planning. Maybe the planners, either with their Planning hats off or on, could come up with anecdotal stuff. They seemed to be at the hub of the wheel when it came to knowing what was going on with the County's growth. The planners wore one hat as the rule people but also had a wealth of information. He'd like for them to be able to share what they could about the DMR. LaDana

asked what he and the Board wanted the planners to bring. What were they interested in knowing about that they might be able to pull together?

Janet said one thing they looked at for the DMR was the cost to provide services in outlying areas versus in town. A study done in Lake, Ravalli and Flathead Counties showed that for every dollar an individual who lived in the rural area paid in taxes, it cost at least two dollars to provide services for fire, police, etcetera. For every dollar that a taxpayer in a sewer and water district paid, where there was higher density, the cost to provide those same services was fifty cents. They were utilizing infrastructure already in place at a more efficient level. It was a direct impact to the taxpayers to continue to allow higher density subdivisions 5 to 10 miles from town. A copy of that study would be helpful. She thought that was one of the reasons this was enacted.

Janet had video on Tribal planning, work with [former County planners] Dave DeGrandpre and Sue Shannon and the University of Montana Land Use Law Clinic on the whole concept of density and regulations. It would be good to show that video so the Board could see some of the history. A statistically valid public opinion poll done in the mid-90's done by the University of Montana Bureau of Business and Economic Research should be shared. A team of Dave Stipe, Janet Camel, another Tribal representative, a Missoula County representative and a federal highway consultant came up with a questionnaire. They asked Tribal and non-Tribal people what their thoughts were on protecting groundwater, farmland, infrastructure, areas that flood, vulnerable aquifer areas and onward. Something like 80% of the survey respondents wanted to protect the groundwater so they mapped the vulnerable aquifer areas on the reservation. Then they mapped the steep slopes over 25% or even 35% that were just undevelopable. You couldn't develop or get fire trucks up those slopes. They used the NRCS soils data to map the areas that frequently or occasionally flooded. They mapped critical wildlife habitat areas. They utilized many layers in GIS to help develop the DMR. It was more protection of resources. It wasn't really dictating land use. It dictated development density. The higher the density the more impact there was on the resources. The Growth Policy reflected the importance of protecting those resources. When she and Dave DeGrandpre worked on the Growth Policy, it was based on the study done in the mid-90's, the public opinion poll and the mapping. Their mapping was based directly on the public's opinion and what people wanted to protect. This was a place that was special and not overdeveloped. What did the people think made it special? [The people] supported the cooperative planning between the Tribes and Lake County. They were working off of that information. She thought it was important to have available to people.

LaDana said she didn't know that she could get that. She had a little box from the meetings. That was what she could come up with. Janet said she would be happy to show the half-hour video.

Gale shared comments he personally had heard in respect to some of the points that Janet made. He'd heard people say that if water quality was so important to the Tribe, how come the Tribe would allow gravity flow septic systems while the County mandated pressure dose. He didn't know how to answer that question. Janet replied it was a good question. She thought they'd been going more towards pressure dose systems. It depended on the soils. They'd even put in lagoons in some places where there was no percolation and it was all evaporation. Gale said they also occasionally heard the DMR tried to foster development near municipalities that already had

the services but they didn't have the services or the infrastructure to handle new development in place, such as evidenced by Polson lately. This was the other side of that discussion. Janet noted emergency services were specifically tied to distance from where they were housed.

Rick said there were expectations. He lived at Lake Mary Ronan. They didn't expect to see a deputy any time soon. Janet said it was a matter of cost. It cost the taxpayers more to serve people in outlying areas than it did to serve people in town because of distance that had to be traveled. It was mainly emergency services. Some communities had capacity for additional hookups. It wasn't across the board. [The Tribe] worked continually to support Lake County infrastructure projects, for instance in the legislature. She gave an example of a subdivision the Tribe did in Pablo. They were going to hook up to community sewer rather than put in individual drainfields. This was an example of their concern in a vulnerable aquifer area. The Tribe practiced what they preached. It was difficult because they had so many responsibilities with such a small staff. She was happy to explain to people with questions like that. She knew people who could come and express why they were in favor of the DMR, including quite a few non-Tribal members. She had a copy of the land use study and the video, if that was helpful. She didn't have a copy of the infrastructure cost study. She thought it was done by someone in Flathead County for Lake County.

Steve R said enlarging the sewer and water and utility system, as well as the emergency services, to a 400-home subdivision built on the outskirts of Polson was a lot cheaper than trying to provide those services to 400 people in the Mission Mountain foothills. It certainly cost money everywhere but it was cheaper to provide services close to existing urban areas even though the number wasn't zero.

Steve R touched on the March 2014 memo. Those suggestions came from experiences that staff had with frustrated people. In line with Bob's suggestions, maybe staff could go through the memo and remind themselves of experiences they've had with applicants that were examples of points in the memo and relate those to the Planning Board at a meeting. It would be interesting to see what was left of the DMR without the land use comments. LaDana thought there wouldn't be anything left. She and the County attorney, Mark Russell, talked about this. Unfortunately Mark Russell left for another position and they were in the process of hiring another attorney. They didn't envision more than a couple of pages that were strictly density. It talked about things like cluster development, which was in the subdivision regulations section of state law. That should be incorporated into the subdivision regulations not the zoning regulations, so there was a way to address that if they wanted to keep it. There were ways to address some of the issues like the conservation stuff, which might be in some other form elsewhere such that [the County] could still address them.

Steve R said he didn't know what it meant to take out land use. An attorney's opinion would be useful. [The opinion] might say that a particular area of the county was a long way from other urban development. In order to allow a variety of land uses, including agricultural uses there would be a low density, requiring minimum lots of 40 acres. Land use was mentioned in there, but it didn't say you had to use the property for agriculture. It said they wanted it to be 40 acres in case you wanted to use it for agriculture. If this was the kind of wording used, instead of maybe the current wording, would that be acceptable? Would the attorneys feel that was

defendable? He thought one meeting the Planning Board should have was with an attorney who could give some insight into the legal problems and plusses and minuses, and whom the Board could ask about changes.

LaDana asked Gale if that was realistically possible. Gale thought they could try to do that. He was surprised there'd not been a legal challenge to the DMR. Janet said one reason could be the University of Montana attorneys and the Land Use Law Clinic worked with Dave DeGrandpre on the DMR when it was first drafted. Another reason could be they had a group of realtors that helped with this. They had a team, including someone from Woody's and a realtor from Ronan. A lot of realtors came out in favor of the DMR at the last hearing. They could predict that next door would not be subdivided. People liked that and the land values would go up.

Steve pointed to subdivision applications that came to the Board where the neighbors would be on 20 acre parcels and the applicant would want to break a parcel into 5-acre parcels. The neighbors would say their property had value because it was 20 acres so it would be devalued. They'd say there weren't a lot of people in the area and those who were there valued that remoteness and solitude. Gale said they had people come in who had the 80-acre family farm where that was their retirement, who ended up in 40-acre density. Where did their retirement go? Rick added they couldn't sell to their family members. LaDana said they came to a point where they did illegitimate family transfers to be able to split the property. They saw quite a few that were most likely evasion down the road 2 or 3 years after the limit for which they had to hold it was over. That was when you saw it sold. It forced them to become liars so they could sell their property.

John asked if they would be able to have public meetings. LaDana said yes. This was long overdue for the public to comment on it. Staff got comments on it almost daily. John said what Gale heard, what John heard and what Janet heard weren't the same things so they had to hear from the public. LaDana thought the Board could hold a special meeting. Rick thought they'd be well served if the public had more than a moment's notice. He was curious if there was flexibility in the Oct. 31 date from the Commissioners. They might have the public input to grind on and maybe a special session. What were the requirements for public notice? LaDana responded if there was a quorum it needed to be noticed and they needed to open it to public comment. The public was invited to work sessions. She checked with Gale that there was new legislation where the public could not be limited in the amount of time they could comment. Gale said you could encourage a limit but you couldn't shut someone down.

Roland asked if the Board could get a basic timeline of events over the last 10 to 20 years, including when the study [Janet mentioned] was done, when this first got tabled, and what major voting took place. It didn't have to be detailed, just a chart of milestones. Steve R recalled the meeting with this [March 2014] memo. The Board didn't get a chance to discuss the memo. The public took the whole meeting. LaDana agreed this was because the public was here and they heard the public's stories. Steve R said the Board couldn't do that every meeting if they were to get something done. LaDana said they couldn't close the meetings to the public. Steve R thought the public could hear the Board discuss it but they didn't necessarily have to enter into the discussion at all times. John said his point was he wanted to hear from them. Steve R said he did too. He wondered if they could have an early public hearing and a late public hearing

with a couple meetings in between where the Board could limit public input. The public could be present but the Board could talk to the attorney at one of those meetings and go through some of these other ideas. He suggested 4 meetings between now and Oct. 31, with two of the meetings controlled and two of the meetings open to public comment.

Gale said they'd gone to the public quite a bit, to solicit comment without much success. He gave the example of the 10 million dollar courthouse expansion project where one person showed up to comment. Steve R said there were 40 people at the March 12, 2014 meeting after the memo came out. Steve S said at the first meeting you might have 40 people. At the second meeting, you would have 10. At the third meeting, you'd have 1. LaDana said the other thing to keep in mind with the March 2014 meeting and its timing was they'd had staff turnover, policies had changed, the public had been wronged, and what the group heard that night were a lot of was people who felt they hadn't been treated fairly. Gale thought they could take Steve R's suggestion and have a half hour public comment period, possibly with people signing up in advance and encourage people to stay to 2 minutes or 3 minutes, then close the public comment period and go into a working session.

Gale returned to Rick's question on the Oct. 31 date. One Commissioner was very set that this be done by Oct. 31. Rick noted they'd need time additional to the regular monthly meeting to put this together. Roland asked if the DMR was generally a hot potato where people had very strong opinions on a very polarized issue. John thought it was going to be but as Gale pointed out, they hadn't heard from people. People limited by the DMR talked to him and pointed out what their neighbor would do if the DMR went away. LaDana suggested the Board focus on whether these regulations applied to the non-Tribal lands in Lake County. She thought federal lands and possibly some other lands were excluded. Did it apply to every parcel out there? It said it only applied to the creation of parcels. If she wasn't subdividing, who said she couldn't put 20 houses on her 20 acres? Janet asked if you had to subdivide for mortgage purposes. LaDana said if you could find a funder you wouldn't have to. You didn't have to subdivide for mortgages. What limited that? The planning staff took [a particular] interpretation because, in her opinion, they didn't have direction. She wasn't here when this was implemented but the notes and materials she saw showed that this had always been an issue and the interpretation taken was that if she had 20 acres in 20-acre density, she could have a unit on there. If she wasn't creating parcels, could she have a unit or could she have 20 units? Roland asked if water use dictated this. Didn't you need to form a water district if you had more than 5 homes on a well? LaDana said you could do that without subdividing. Roland said there were still regulations that controlled so you couldn't put 25 houses on a 10-acre piece because you wouldn't have the water source. LaDana asked what if they got approval for a water source.

LaDana said rentals were a big issue right now. People wanted a rental unit (or some rental units) to help pay their mortgages. Did the DMR really protect against that? She thought it was a big issue they needed to look at. If it didn't apply to all the lots, who did it really apply to?

Gale said some of the things that people assumed would happen with the implementation of the DMR didn't happen. They thought there would be lots of amendment requests. They thought people would be selling development rights regularly. These things haven't happened. LaDana said the people who did ask about it didn't know what a right was worth or who to go to get one.

No one wanted to sell the rights. And who kept track of them? Some of those issues really did come up at the Planning office and could be in some of the scenarios that staff brought forward to them, and weren't necessarily in the memo from 2014. Things had come up since then.

Rick suggested for the next regularly scheduled public meeting to run a public notice. The Board discussed when might be a good time for an extra meeting, with a leaning towards 2 weeks after the regular Sept. meeting.

Janet checked if there was a reason behind one Commissioner wanting this done by Oct. 31. Gale replied it was the 10-year anniversary and that Commissioner felt they needed to get it done. LaDana noted it hadn't been done by the 1-year or 5-year review timelines. There were too many challenging things and interpretations in there. She didn't want to see a lawsuit happen. Various extra meeting scenarios were discussed where the Board and public could both participate. LaDana mentioned she'd been through the packet that Gale showed them although she hadn't been at the meetings. One of the things people wanted was night meetings so they could attend them. Gale said a big question the Commissioners had was could they change and salvage the DMR or was it beyond repair. LaDana said maybe the concept was there but these weren't the regulations to go with the concept. John thought a priority question for the attorney was what happened to parcels that had been affected by the DMR if then the DMR went away. LaDana said they potentially had that now. They told people they couldn't do things based on interpretations the County made over time which might or might not have been what was written into the regulations.

Rick asked if other Counties faced this and what their contemporaries were doing throughout the state. LaDana said she hadn't found [other] regulations that were strictly density; a lot were tied into other zoning things. Rick asked if this was driven by state mandate. LaDana replied no. These were zoning regulations that the County implemented. Gale said the rules were an implementation of the Growth Policy. John said there were things you could do to implement the Growth Policy. They chose to do a density map but they didn't have to. Roland thought it was dictated from the standpoint of a healthy, active, non-static growth policy. That was important in grant considerations. Janet referred to state statutes for growth policies. They talked about protection of groundwater, protection of wildlife habitat and so forth. It was an implementation of that. LaDana said nothing required that they have the DMR.

Janet gave background. She mentioned the highway corridor, and that this stemmed from how to implement the Growth Policy. This was the recommendation that came out from the law school students. They actually wanted to go much more in depth, with billboard regulations and quite a few different types of regulations. Everything boiled down to just be density. With the wildlife corridors that were put in place on the highway, there were millions of dollars' worth of crossing structures put in that were paid by the taxpayer to reduce animal-vehicle collisions. They wanted to zone the corridors. It didn't make sense to have multi-million dollar crossings if you were going to have land use right next to them. The next issue was if they wanted to do County-wide zoning for land use. The law school suggested just focusing on density. That was how Dave DeGrandpre and the law school came up with this solution. They boiled it down to just density to protect that taxpayer investment and to try to look at ways to protect the wildlife habitat and reduce animal-vehicle collisions. As a Commissioner, Chuck Whitson liked the fact that they

were trying to reduce the number of collisions on the highway by protecting the wildlife movement corridors. There were so many reasons why this was developed the way that it was. It took a couple of years to get this in place. It wasn't just thrown together. The implementation part was difficult because Sue Shannon, Dave DeGrandpre and Joel Nelson were gone. They were the three who worked on it the most. Could they bring Dave DeGrandpre back as a consultant who could also answer some of these questions? He worked throughout the state as a consultant.

LaDana said for history, she could provide an entire packet of reading. If the Board wanted to understand what happened, this packet was available. She didn't want to make copies for everyone since it was probably more than 100 pages. Rick commented that some historical perspective was needed. That said, what they needed to do was based on maybe different circumstances. Steve S mentioned looking into the future, 50 years out instead of 10 years back. Gale said some people pointed out that in 50 years the Lake County population projection was a decline of almost 2,000 people. Why did they need density when they'd have 2,000 fewer people in 50 years? Bob S asked if he believed that. Gale said he did. The numbers were from the Montana Dept. of Commerce. Bob S said it wasn't what he saw out by Safeway. Those weren't houses. Those were people betting. He was talking about people moving here, not population growth. Gale said that was a discussion that needed to happen. Roland said it could be a driving factor with the decision-making process of what and if a density map should be created. Bob S described summer traffic. People moved here who came here in the summer. Gale said to look at the school enrollments. Janet said retirees were moving here.

Steve R thought they didn't need more incentive to make short-term decisions, which would be a disservice to the kids. They needed to have some ways to encourage long-term planning and to encourage people to realize that they occasionally and reasonably sacrifice some short-term gain in order to improve things for the long term. This was one of those things that could provide some incentive to make some long-term decisions even though they may require some short-term sacrifices. Gale said the response that he might get from someone was if I want to split my property and it's less than 160 acres, I have to go through subdivision review and DEQ review, and there were already regulations in place; you're just adding another unneeded layer. Steve R said the regulations were there because someone tried to pull a fast one. If someone were to come up with a way to manage those bad actors without creating the hoops that everyone else had to jump through, he would love to hear it. He was frustrated with those who were frustrated by regulations and blamed [the Planning Board and Commissioners] instead of the people who tried to pull a fast one.

Janet referred to John's mention at the last meeting of a lot of lawsuits against the County before the DMR were put into place. Had there been any since? LaDana said there had been some lawsuits. Most dealt with things that went to the BOA where they were trying to get some flexibility in the DMR. John thought one reason there had been lawsuits [prior to the DMR] was that people came to staff, thinking they could do any configuration of lots that they wanted. The Board and Commissioners would see it was in the south end of the County and held to the 20-acre density concept. The people coming in didn't know that and felt blindsided. LaDana said the 20-acre density policy in the Master Plan was the concept from which they were going. The Master Plan preceded today's Growth Plan. The Planning Board used that as their guiding

document but it wasn't a regulation. They were getting sued because they were pulling from the guiding document for the regulation. She'd been through the subdivisions to see what was denied. She could bring those to the next meeting. If you looked at it, the Planning Board made a decision based on this 20-acre density policy. That was why the Board denied it. The Planning Board, the staff and the Commissioners all had interpretations. In many of those cases, what they were doing made sense with what was going on in the areas. There were already some small adjacent lots. That's what the people were trying to do and the County was saying no, you couldn't do this. That was why they were getting sued.

Roland asked if the lack of lawsuits could be tied to that even though subdivisions have been approved, there were no houses going up. LaDana said there weren't a lot of subdivisions going on. The two referred to the recent subdivision in Pablo that was recently redone. Roland thought he'd be dead and gone before 4 houses were built there. He gave examples supporting that new construction was low. LaDana said he'd be surprised at the new construction that they were seeing. Roland thought that would be high end stuff. LaDana said that in the Swan, they'd seen more permits there this year than they'd probably seen in the last 4 years. They weren't all half million dollar houses.

John said the Growth Policy had an objective of maintaining the rural and agricultural nature of the south end of the County. How did you deal with that if you didn't have a density map? LaDana thought that was a discussion they had to have. How did you say that they couldn't develop the south end of the County because it needed to be rural? How could you not say that across the whole county and be fair? Roland wondered if they were throwing an atomic bomb on that which they perceived as a problem for overkill. Maybe the DMR from the development point, rather than the other points brought up, was not a problem. Were they putting a lot of effort into something that wasn't an issue, because few people were building? There weren't a lot of people subdividing their 10-acres into 1-acre lots. John said if you looked at the schools, kids weren't here. Roland and Gale shifted the discussion to the backlog of parcels waiting to be sold. Nobody was buying them. Who would subdivide when they knew about these unsold parcels already out there? Roland pointed out to buy land and build a house was a lot more expensive than buying an existing home of comparable quality. He thought that's why they hadn't had trouble.

Gale said the Planning staff was great. They provided all kinds of advice and direction to the Commissioners and also the Board. They were very thorough and knowledgeable. They had arguments and disagreements but they were a fantastic group up there right now. [The Commissioners] had a good working relationship with all of them and they were very proud of them. They had a very good staff. Steve R said if an acquaintance complained about the cost and hoops of subdivision, he asked them to compare how big the checks to the surveyor, the private planners, the engineer and the County were. The County was the smallest check they wrote but they blamed the County for the cost. He agreed that for the work that got done, the citizens of the County were getting a real deal for the advice and review for their planning.

LaDana asked what the Board members thought about when to have meetings. Roland thought if they couldn't get all of the Board members together, information could be gathered to send to everyone. LaDana said that at the moment, the members had the memo and the regulations with

comments. Those were big parts. This hadn't come back until now because she and Mark sat down and worked on the regulations. It was slow with other stuff going on. She just completed the comments 2 days ago. They put a lot of thought and time into discussing the document. They tried to get comments from MACO.

Roland asked about the videos. Janet had a half hour video she'd like the group to see. LaDana asked if they had a method of displaying it. Roland asked if it could be put on YouTube. Janet said you could view it on a computer with a projector. John checked that this would be an informational meeting from staff to the Board rather than a public meeting. LaDana thought they could start it with Janet's video and then see where they went from there, and what kind of information they could get together before that meeting. It would have to be noticed. Steve R said they should expect some public. Steve S said it wouldn't hurt the public to see the video. Others agreed. LaDana said it would be a working session. Roland asked if working sessions always had a public comment section. LaDana said they should allow the public to comment.

Discussion on the timing of meetings resulted in the Board members suggesting 4 meetings, on the second and fourth Wednesdays in Sept and in Oct to try to meet the Oct. 31 deadline.

Janet said that some of the things described as land uses were simply needed definitions in the document. LaDana said it got implemented in the regulations. She realized they were definitions but you were designating the land as agricultural land or conservation land. Janet said it was just saying what 'agriculture' was referring to and defining what that term meant. LaDana understood that but you typically didn't include a definition unless you used it in the regulations. Janet understood that LaDana was trying to point these out as land uses but it was a term that needed to be defined. She thought they needed to go through each comment and see if it was valid or not valid. If Board members had a month to go through it with their perspectives, they might counter some of the comments.

LaDana said they needed to understand whether this was going to be purely density regulations like it went to the public as, or were they going to pull other stuff into it. Janet said her point was the DMR were to implement the Growth Policy. The Growth Policy talked about land use. LaDana read from the document that any future attempt to add provision that dictate specific land uses on a County-wide basis shall result in the DMR becoming null and void.

Janet heard that. She was trying to say that she didn't think they were dictating what the land use should be. They were describing why this density was important. It was to protect these values. It wasn't to say that this was the land use that had to occur in this area. It was that these were the values pointed out in the Growth Policy that were being protected. They had to be careful that they weren't so narrow in their definition of what land use was. They were trying to protect wildlife habitat, which was not necessarily a land use. A land use was residential, commercial, industrial, transportation corridors, utility corridors. Wildlife habitat was a natural resource. There was a difference. Wildlife habitat and aquifer vulnerability areas weren't land uses. Those were resource conditionals.

Gale said it also talked about developable and undevelopable land. Janet agreed. LaDana said that designated a land use. Janet said it was saying that some land had value for wildlife habitat

and it was a natural resource area. For land use, in zoning regulations you would say this area would be residential, this area should be parkland, and so forth. They weren't saying this in the 1 per 40 areas. They weren't saying it had to be set aside as parkland. That was in the subdivision regulations. They were saying this was an important wildlife habitat area or an important aquifer vulnerability area. She would take LaDana's opinion into account as she was reading it and see if they could massage the language somehow. LaDana said it wasn't just her opinion. She went through this with an attorney and this was Lake County's position on this at this point. Janet noted that another attorney went through this too.

Rick said he spent too many years on too many lawyers. It wasn't always that great a deal. The values were nice and he respected that. How this would hold up under legal challenge was a whole different threshold. John said that defining agriculture wasn't prescribing land use. Janet agreed. John continued that telling what a farmer does didn't say he had to farm. They were ignoring that logic, but couldn't.

Especially on the cluster developments or the conservation stuff, LaDana said if you were saying we were granting you this additional [amount], if you put aside this much for agricultural land, you were defining a land use. You were saying it would be agricultural or open space and it would be that forever. You just defined a land use. Several Board members spoke. Janet said the language had to be tweaked. John said that was why they had to go through these regulations. Janet agreed; they needed to make sure it didn't imply that. LaDana said that was what her comments were based on. A lot of it was an attorney's perspective. A lot of it was also how the planners were interpreting this document. Janet said it was really hard because you didn't have the 3 planners who [originally] interpreted it. LaDana noted she had their interpretation from when she started in Planning. She used the interpretation they used at that time. They consistently had been using that interpretation but what they'd consistently been doing probably wasn't right with the document.

Janet said she looked forward to the working sessions. She hoped they could tweak the language and didn't have to scrap the whole thing. She appreciated LaDana's willingness to work on it and to let the Board work on it.

Steve R asked if the Board was going to postpone extra meetings until after the next regular meeting. LaDana confirmed no other items were scheduled for the next regular meeting of Sept. 9. Janet thought that would give the Board time to review [the handout] before the next meeting and have comments ready to discuss. Roland thought a question was if this density plan was the best tool for managing what they were talking about. Janet said she would love to see County-wide zoning, especially in those wildlife corridors but that wasn't where they went with the DMR, to which they scaled back. She and Gale touched on weed management problems, challenges and efforts. Janet described concerns and extensive efforts done by the Tribe for wildlife corridors. There was a lot of science behind it and a lot of work went into studying which areas needed that higher level of protection. She hoped the video would explain it better and more concisely than she could. She mentioned there would be Tribal language in the video that some people might not understand. It was hard for the Tribal members to see the growth and impacts to natural resources where they hadn't created the vast majority of the impacts. It would be nice if everyone could work together to protect aquifers. This was a way to try to work

together. That was why they felt so strongly about it. The Tribal wildlife biologists and Seth Makepeace (aquifer vulnerability) would agree with her.

Steve R noted they had a plan for meetings. He checked for other needs or business.

Lita thanked the Board members for refraining from whispering tonight, since that could be distracting both for others during the meeting and on the meeting records. She also noted the Nov. 2015 meeting would fall on Veterans Day and would need to be shifted if there were items.

Rick asked for the meeting record to reflect that he missed the information on Lake Mary Ronan and the splitting of the property into 160-acre parcels. He'd received sharp concerns about that activity. He asked to be informed on activities in that area, even if they were beyond the purview of the Board if they would be of concern to the people up there. He took responsibility for not catching that item and asked for some help. He took some heat on that last item. Robert checked that the split was the Maddy subdivisions that were reviewed by the Commissioners. He explained that staff followed the legal procedure to notice that. It didn't require Planning Board notice. Those who were required to be noticed per state law and the subdivision regulations were noticed. LaDana added state law didn't even require that the neighbors be noticed for first minors. Lake County did this as a courtesy and this was in the subdivision regulations. Rick appreciated the information. Robert said they wouldn't notice outside the requirements because that could put them in a lawsuit. To notice a list or to notice Rick randomly would put the County in a liability position.

**Motion made by Rick Cothorn, and seconded by Steve Rosso, to adjourn. Motion carried, all in favor.** Meeting adjourned at 10:09 pm.