

LAKE COUNTY PLANNING BOARD
December 9, 2015
Lake County Courthouse, Large Conference Room (Rm 316)
Meeting Minutes

MEMBERS PRESENT: Steve Rosso, John Fleming, Sigurd Jensen, Rick Cothorn, Bob Stone, Steve Shapero

STAFF PRESENT: LaDana Hintz, Lita Fonda, Wally Congdon

Steve Rosso called the meeting to order at 7:04 pm.

Steve offered corrections to the Oct. 14, 2015 minutes. On pg. 2, 'wake zones' changed to 'wake zone buoys' in the next to last line of the second paragraph. On pg. 6 at the end of the first paragraph, 'the only variation they needed to be allowed was for length' changed to 'the only variance they needed was for length'. On pg. 7, 'specific to lakes' changed to 'specific to those lakes' in middle of the second paragraph. On pg. 8, 'Johns' changed to 'Johna' at the end of the third line of the second paragraph. In the fourth paragraph, 'what [people] did diminished water quality, but highlighted materially diminishing water quality' changed to 'what [people] did would diminish water quality, but highlighted that the issue was "materially" diminishing water quality'. On pg. 10 in the first paragraph, 'It was tearing the curlew...' changed to 'It was used to remove the curly leaf...' That was as far as he got. Rick mentioned it was fine to take editorial liberty to condense his comments.

Motion by Rick Cothorn, and seconded by Sigurd Jensen, to approve the Oct. 14, 2015 meeting minutes as corrected. Motion carried, all in favor.

DISCUSSION ITEM – GROWTH POLICY (7:10 pm)

Wally Congdon directed the Board members to give their four names to LaDana or Lita. It was just a commitment of some time for those named people, who had the ability to do it and to care enough to make a real difference. If they needed more examples of growth policy language besides those already given, more could be dug out. Right to Farm came up as a policy statement to help guide the question of what you put into a growth policy for that component of who you are and what you have. People who were willing could really make a difference in producing a really good, up-to-date better product for the county. Subdivision comprehensive capital improvement like sewer lines, water lines, roads and streets, stormwater drainage: these things were talked about for years but ended up not being done, probably because nobody put the time into finding people with the knowledge and information or they were short of staff.

Wally addressed the other part of the growth policy discussion. The Commissioners asked for a summary of what the County said they were supposed to do and what they didn't do. He handed out a letter with an attached sheet (see attachments to minutes in the Dec. 2015 meeting file for handout). The letter related to the question of the Growth Policy – Density Map and Regulations (DMR). The attached sheet said what they were doing in part to justify that process. The problem was they said they were going to do something and gave a plan to accomplish this but they didn't implement or use the tool box to get there.

One of the coolest parts of the DMR was called the conservation bonus or conservation benefit bonus. Wally mentioned design improvement standards (DIS). What a lot of zoning ordinances did with those was not just a density bonus but a design improvement as a way to get more density etcetera. Getting the density bonus was hard to do the way they did it because they didn't provide the mechanisms to get the tools needed for the density. The tools were how you got water, sewer, stormwater drainage, better arterial traffic, school bus stops and the other practical things that went into it. If they were going to subdivide a piece of land, what they were doing with the conservation bonus concept was to put the houses here and here, and set the rest aside, and they'd get more houses if they saved [the portion set aside] correctly. That was the proper thing to do. The problem was they didn't plug in the tool box to accommodate it. Part of the exercise of rewriting the growth policy and the regulations that went with it was to give the stuff in the growth policy with the reasons and the rationale specifically. Doing a lot of other things on the list of 24 (from the attached sheet that was handed out) wasn't so hard as a good set of tool boxes. What they needed to make it defensible was the reason why. If they didn't get that stuff plugged in, defending the tool box was a really hard thing to do.

Wally was sad that no one in the towns of St. Ignatius, Ronan or Polson stepped up there to solve their problem of infrastructure. They had a chicken and egg problem where they couldn't build a bigger system unless they had more hookups, and they couldn't get more hookups unless they had a bigger system. You didn't get more hookups without providing for refunding money for people who built the lines unless you had a plan for getting the money from the state. You needed the capacity for the houses, and the houses for the capacity. He asked them how to contract services until annexation happened later. None of them had this. None had a mechanism to rebate money for septic or water or system improvements. Polson did have a stormwater drainage system which was supposed to be replanned and redone because it dumped into the lake. They weren't supposed to be doing that. They really needed more capacity and better design etcetera to deal with the stormwater up here. They had no mechanism to even deal with that. They hadn't thought about it. He didn't know why [the County] back then didn't say they had a mission of what to do, ask how to do it and get on with it. [The Board members] were on a mission to get there and had the right vision. Wally gave some examples of the power of ignorance to be avoided. The conservation incentive was a planned unit development (PUD). You put more density here and preserved a whole bunch of other land the way you should.

John asked how taking away the DMR furthered what they were trying to accomplish. Wally responded the beauty of the DMR was it was zoning. The problem was that what it said was it wanted to encourage the density to be built in certain places but the list of other things to get that done wasn't done.

Steve R asked if the sewer districts had been contacted recently to verify they didn't have capacity and wouldn't provide sewer and water to those outlying areas close to them. Wally said the Tribes' stated they weren't letting non-Tribal people hook up. St. Ignatius said they needed more capacity for graywater but they had no provision for contract sewer and no mechanism to rebate money for building extensions or anything else. They weren't doing it and would not be doing it right now. Ronan had the same response. Wally was stunned since they needed money for a bigger drainage area or whatever. Polson gave the same response. They were supposed to

have a stormwater drainage plan for Polson because of the issue of dumping oil off the bottom of cars and the salt and so forth off the roads dumping into the lake. [The County] had been waiving RSID's for special improvement districts for roads with subdivisions but they had no waiver of the right to protect an SID for water, for sewer or for the question of stormwater drainage. This stunned him.

Recently, the Commissioners said if it made a difference to get the waivers and do the stuff right, they would agree to start putting the drainfields etcetera in the roads rights of way, with conditions. For places like Dayton and Big Arm where there was a road right of way by little tiny lots with not enough space, they would let people put their replacement drainfields in the right of way with conditions. People would pay a simple fee up front to put it in and map it out and they would waive the right to protest the RSID for the public system. When the system [became available], they would have to hook on within 6 months. It wasn't that they weren't trying to get moved into the position so people had a plan and did it. The problem was they had 10 years to do this stuff. He pointed to the conservation density idea, which was fabulous, but they didn't give people a mechanism to get it clustered that well without paying the whole bill for public water or public sewer. They couldn't do it two miles from Polson by contracting it and hooking on because Polson had no mechanism to do that, nor did the other entities because [the County] hadn't done it. He wasn't critical of the fact that they had the right idea; he was critical of why they hadn't done it. He gave an example of what they could have been doing.

John asked if Wally was saying they could have a density concept but they had to be the same everywhere. Wally said they didn't have to be the same everywhere. The underlying concept had to be applied evenly but there were differences in the land and terrain. He gave examples. How they treated it in terms of the objectives was driven by the physical differences in the land, the resource, etcetera. They had to treat them differently. The density concept was the most important part. The issue wasn't to get rid of the growth policy. The issue was that he couldn't defend the issue of the DMR with the records he had because they hadn't done what they said they'd do. The DMR wasn't the growth policy. The growth policy was the guiding directive policy statement. They had to be consistent with the growth policy when they did zoning and subdivision. Having not done that list of things, how could he say to someone that [the County] had done what they said they'd do so the DMR was consistent with the tool box they had and the facts they had? John asked if it would be smart to go back and do what they needed to do to the growth policy and then fix the DMR. Wally said it would be smart to do what they needed with the growth policy, and this might be where they went. The problem was getting by in the meantime. John mentioned the resolution from the Commissioners to repeal the DMR. Wally explained the Commissioners were doing a hearing on the question of whether they should repeal it for the time being. They hadn't made a decision. They said if they couldn't defend the product and say the zoning was consistent with the growth policy, it wasn't defensible.

Bob S referred to the county attorney meeting Wally recently attended. It sounded like not following through after a growth policy was created was not uncommon. How many of those other counties were scrapping their density map before they fixed their growth policy? Wally replied all of them did. They didn't have a density map but they had zoning and subdivision regulations and extractions. An extraction was, for example, if Steve R was building a subdivision 2 miles out of Polson, a condition of approval might be he needed to pay an amount

to the County road fund for long-term maintenance for that road until it was paved and if John was building the same subdivision in Mission but there was no graveled road, he might need to pay the money to pave. It wasn't just getting money—it was making the improvement. Steve S might be required to extend a sewer line from Bigfork to the Upper Swan. If you tried to do this as part of a density bonus or part of a zone or subdivision condition and it wasn't set up in the growth policy, you got whacked. He gave the example of Lewis & Clark County, where it trashed not only what they wanted for density but their subdivision regulations for extractions. Lewis & Clark County didn't have a density map but they had a density guideline for their subdivision regulations.

Bob S said he'd heard some of this recently but what he'd heard was Lewis & Clark County was beside themselves with problems that developed primarily because they didn't have a density map, and they were very interested in Lake County's as a model for what they'd like to do. Other counties looked to Lake County's DMR as a model. It was extremely simple like the constitution was simple, in that you could interpret without getting bogged down about a single sentence or word. It was also moderate. Many compromises went into it 12 years ago. They felt and feel that it covered most of the concepts very well. People he spoke with in other counties were appalled Lake County was going to dump this, when they could just fix it. He thought what John said made sense. Why couldn't they work on the growth policy, since they weren't currently being sued? Wally said he didn't want to be sued because he didn't want to give someone the incentive to sue them again. Bob S said if you didn't have a density map, you'd be where Lewis & Clark County sat. They already had been sued and had been making decisions in a haphazard way that opened them up for more lawsuits. He worried about lawsuits because they didn't have DMR rather than lawsuits that hadn't happened in 12 years. He and Wally agreed there'd been no demand for 10 or 11 years. Wally said the other reason lawsuits didn't happen was nobody sat down and thought about it. They were the only county with zoning that didn't follow through. LaDana explained the DMR was adopted under the zoning codes.

Wally said the question was if they were going to do the growth policy alone, how did they get through it in the next months to get it done, hoping they didn't get sued, and update the DMR enough that they could make it work. That might work if they went that route. The problem was that if they got whacked over it, it would not be a pleasant discussion. The minute you lost a zoning lawsuit, nobody wanted to zone again and do whatever else and that was tough. The other problem was why not keep the door open to what they could do well, such as conservation density bonuses, density map bonus and PUDs. LaDana mentioned these were in the subdivision regulations. Wally said it was a chicken and egg question. They needed to get the growth policy done with the right stuff and then they could defend all of it. When they did the DMR, the list should have included that they would figure out an appropriate program for waivers of protests for special improvement districts and waivers of annexation protest. What got the municipalities to give you sewer was once you waived the right to protest annexation, that went into their tax base and they got revenue. Bob S confirmed with Wally that the timetable [for the growth policy revision] was less than a year. He was concerned that one of the Commissioners was convinced Lake County wasn't going to grow and wouldn't ever need a density map. Most people didn't believe that. The climate for big subdivisions was similar now to what it had been for the last couple years. He thought the chances of getting sued were a lot less likely if they just left the DMR as it was and fixed it by being in a position to not get sued within a year. The only gamble

was a few months. People to whom he spoke who knew more about it than he did, didn't think they had any chance of writing a new DMR if they junked this one. Wally asked why that was. Bob S thought the anti-regulation people, who perhaps didn't even have a desire to do subdivision, just plain didn't like regulation. He recalled what it was like in Flathead County when zoning was instituted. He went to a lot of meetings, out of interest. The most telling part of that whole thing was when the property rights people were arguing and screaming at each other because one planned to have a dirt bike track right next to the guy who had been agreeing with him about doing whatever he wanted until he heard about the dirt bike path. That was the problem with no zoning. He gave other examples of what happened there.

Wally understood this. It was depressing to him that when you said they had a conservation density bonus, the guy who lived across the road [from the portion of the lot where the density went] was the one to sue and said he didn't buy here to have 10 houses across the road, and the zoning wasn't right and they had no factual basis for doing this in their growth policy. You got into the problem of which side would be the one to lower the boom because the two weren't tied together. Bob S asked what chance they had of getting a density map and regulations if they scrapped this one. He thought Wally, being more local and having been born here and probably having paid a lot more attention to planning, probably had a feel for how difficult it was to get this sort of document in place. Did Wally think they could do that after they got the growth policy updated? Wally thought it was doable and that they would get a better DMR that made it very plain what you got. He would make the conservation bonus bigger than it was right now. To pay the price of the sewer line to go a mile from the sewer area was expensive and you needed enough houses to make somebody do it. He thought that not only would they get [the DMR] back, they would get a better product back, a better waiver for the stuff that was supposed to be there, etcetera. If you had the right factual basis, the right story behind it and a good product, you'd get it.

Steve S checked that today's growth policy was out of date. Twenty five identified items came out of the growth policy that were supposed to be done and some were not. If they magically did those 25 things, would there still be issues with the DMR? Wally replied it would have a lot less issues. If they did those things and had the factual basis in the growth policy for doing them, at that point in time, the fear of getting sued over the DMR went away because the zoning was tied to the reason for the zoning (the growth policy). The zoning was then consistent with the growth policy. Zoning had to be guided by and consistent to a significant extent with the growth policy. Steve S asked why not address these [25 items], update the growth policy, tweak the DMR and be done. Wally said the problem was that to get a lot of these done, they needed a growth policy that justified doing them. Steve S said these [25] came out of the growth policy. Wally agreed but the growth policy didn't have a lot of the stuff necessary to get some of that done. Steve S asked why they didn't start working on these, fix the growth policy and tweak the DMR and be done. Wally said that got them there. Bob S said the key word was 'tweak' rather than spend months or years rewriting it and fighting with people who didn't want it. Steve S added trying to reinstate the DMR and put in regulations might be an uphill battle. Bob S thought they might never have three commissioners again who would unanimously vote for a DMR.

LaDana thought the Board members should take a look at what went through those meetings. They were welcome to look through her packet of information and see what happened at the

meetings and what the people and Commission thought at that time. She encouraged them to come and look through that if they wanted to support the current version of the DMR. Bob S clarified that they all agreed the DMR needed to be tweaked. He asked people what the tweaking would address and got very few answers. LaDana referred to information previously passed out on things [the planners] were seeing as some of the issues [in the DMR]. Regarding the growth policy, conditions in Lake County had changed. She'd only been here 8 years and had seen how some conditions changed. They did need to update parts of the growth policy. Steve S agreed but the wildlife and fish hadn't changed. LaDana noted there was more recent data that could be incorporated for those. She wasn't saying to scrap the whole thing but they needed updates in there with more recent data. Steve S thought that made sense.

Wally gave the example of a wildlife corridor with a conservation easement. What they should have done in the growth policy was have a commitment for a wildlife corridor for the bears. It was simple to do. They should have a corridor consistently for the other 40- or 160-acre parcels for the 2 miles the bears go. Nobody got to build there and that would be in the DMR, the subdivision regulations and the growth policy. The corridor [in the growth policy] wasn't just about people and transportation. If you were going to get bears on the eastern front, you'd want to know what the corridor was, where it went, what the season of use was and what the bears [inaudible] the rest of the year. It worked, everyone was happy and it made it go. Those were the kind of tools that should be put in. The same was true for pheasants at Ninepipes and for geese fly-aways and power line things for raptor birds. There was simple stuff to do. They didn't just get left out of the DMR and the subdivision regulations. They got left out of the list of the implementation tools, tasks, timelines and partners. Those things ought to be added to the list as well. John checked that was land use, telling how to use land. Wally said the DMR was land use too. John noted in the 11 years of the DMR, they hadn't been sued and there'd been one request for an adaptation of the map, which was given. Nobody else asked. John and LaDana clarified between them that John was referring to an amendment to the DMR. LaDana noted variances went to the Board of Adjustment.

Wally spoke more about the reason for concern and the interconnection of zoning, subdivision and growth policies, and some history and historical legal action that pertained to those. Steve R asked if the chances [of a 400-lot subdivision] increase if there were no DMR, since someone waiting to do a big high-density subdivision on inexpensive land away from urban areas would hear that the map was rescinded and jump at the chance. Wally said it decreased the chances. The guys who were going to develop something that big weren't holding off. They were guys with big pockets from out of state who knew how to do it. When they heard there was enough demand to build here, they proposed a subdivision and got it done. If they proposed it and knew there was no defensible product, those were the ones they proposed and built. The market wasn't there and wasn't going to be there. Bob S thought the market would be there at some point, probably within 5 years but not likely in the next 12 months. It depended on how cheap the land was and if the developer could slow things down to be the first guy that had something to sell. Cheap land generally meant further from town. Repealing the DMR was something that would hit the papers. Wally said it was the Commissioners' choice for how they did it. He gave the rule of threes used by developers across the country. When you did a subdivision, a third of the value was the land, a third was the engineering and improvements cost and a third was the holding costs and profit. He noted that sanitation rules were done separately from the DMR.

Sanitation rules said you couldn't use gravity in this county for your septic tank; you had to use a pressurized system. The cost of a pressurized system was around \$22,000. For a \$150,000 house, if you put \$20,000 into the septic and \$10,000 into a well, suddenly more than a fifth of the price of the house was in the ability to flush the toilet and turn on the sink. [The County] had another incentive besides the DMR why developers wouldn't want to do it the other way.

Bob S asked about lawsuits. If someone purchased property close to town just before the bubble burst, that person might be waiting to go forward. If somebody else found property that would be free to develop with the repeal of the DMR and he competed with the person who'd been waiting 7 years, could the waiting person sue the county for dropping the map? Wally said no. Bob S summarized that Wally didn't think he could defend it because they hadn't done things for 11 years that should have been done that the County promised to do but didn't. Why did other attorneys think this was defensible? Wally replied they hadn't defended one, they were never in the middle of the Supreme Court cases in MT on the issue and they weren't dirt lawyers. There were six names to talk to about land use type issues in Montana, who'd done 99% of this work in this state for 25 years. One was dead, three were retired, one worked a lot for the City of Missoula and the other worked for you.

John pointed out the difficulty of getting different options from different lawyers. Why didn't they just keep the DMR and get this done to fix the DMR? Wally read from the list of things [the County] said they'd do. They said they'd help municipalities and water and sewer districts develop and expand infrastructure. They heard the Tribes at the last meeting say that no one could hook on to the systems. The document said they would do this and they hadn't done this. He gave Elmo as an example. Where was the opportunity to build there? That was the problem. He appreciated what the Planning Board members were saying and saw beauty in that they were thinking and talking and having the discussion.

Rick asked about the rationale for the Tribes' denial. Wally replied the Tribe said they wanted to be the majority on this reservation. They didn't want non-Tribal owners hooking up. Steve S asked if St. Ignatius was open to talking about providing more. Wally understood that they were all game to work hard at the question of how they did contract services and how they got people to waive the right to annex and if they got more service, how they hooked up the rest of their local houses. There were a number of houses in St. Ignatius on postage stamp-sized lots that weren't on sewer. LaDana said Polson had a number of little pockets they'd like to see closed up in the City but they didn't have the capacity. It was the same in Ronan. John and LaDana mentioned a 7-lot subdivision about five years old with a spec house on St. Mary's Rd, and the water and septic situation there.

Wally said they needed to build this stuff into the subdivision regulations, the DMR, the growth policy and the rest of it. They were discussing the issues they said they'd put in ten years ago and never done. He could write these into the rules. He didn't have trouble defending this if he had the toolkit to do it. He didn't have the toolkit. Bob S confirmed with Wally that they would have his help.

Bob S said he talked to a number of people about things that needed to be addressed. These experts said they were busy and asked if he could get the Planning Dept. to do that. He felt lucky

to get one name out of the phone calls he mentioned. Right to Farm seemed to excite people the most. They wanted to do that. Wally repeated democracy wasn't a spectator sport. Bob S replied that was true but unless your ox was being gored, you weren't going to step in. The people to whom he spoke thought their ox was being gored from other corners. He asked Wally to help the Board do what he thought the experts would do. He thought they'd take the time to read it but he didn't think they'd have a lot of luck getting them to write it. He got six names but they weren't experts.

Wally said that was alright. Average Joes knew a lot that experts didn't. The plan shouldn't be top-down. He pointed out the irony that the two counties most radical about hating the federal plans repealed their local plans. All federal plans must be consistent with local plans to the extent legally possible if there was a local plan. Ravalli and Sanders each repealed their entire growth policy by popular vote. They had no tool box so they had nothing. [The growth policy] was a product that made the zoning, subdivision regulations and capital improvements planning work and gave the reason for SIDs and waivers. It also gave some teeth with the Feds and especially the Swan people needed to remember that. The Swan side didn't have the reservation question to deal with. You had the US Forest Service and the US Fish and Wildlife Service. Their plan had to be consistent with your plan to the extent legally possible. The same was true at Mary Ronan, where Weyerhaeuser would be bound by the forest plan. They still wanted the timber and the access so they were more prone to pay attention to the Forest Service plan if it was consistent with local plans. Rick added they were going to want access fees, too.

John asked how the process would work so he could answer the questions he was asked by the people he spoke with about working on it. People wouldn't jump in if they didn't know into what they were jumping. Wally suggested that if you had 5 people in a group talking about grizzly corridors, those 5 could sit down twice over 2 weeks and write their half page. Each group had an obligation to sit down and try to write their half page on their subject. He gave the example if someone was going to write a paragraph that federal grazing permits should be kept, the guys with grazing permits should write the paragraph. What you were doing was getting the people on the ground who had some expertise and were affected to participate in government and write their portion. Experts probably had a number of paragraphs from other plans whose language they could use and put in the facts that justify it and have it done in 5 minutes. Each of those groups didn't sit down with [the Planning Board]. Each bunch on a separate topic sat down and said this was the one on which they wanted to do a draft.

Steve R asked if Wally thought he had a good feel for the political polarity in the County and how it might compare to places like Ravalli and Sanders County where people just didn't like regulations. Was Wally confident if they rescinded the current DMR that they could get a new DMR accepted by the people and approved by the Commissioners? Wally thought they would for a couple of reasons. He differentiated between liberal and conservative versus the other issue of progressive. He gave examples of progressive work the Commissioners were doing. He thought that was the feel of where the DMR would go. It was a progressive concept. Density got you a number. It didn't get you the amenity questions they were looking for like corridors, no-build zones, building setbacks from no-build and fences. He would put those in a zoning ordinance differently to make it work more to accommodate things like a corridor or fences. He listed some of the agricultural resources Lake County had. They had a lot of potential for

progressive agriculture. The door was open to do it right and do it well and have good reasons and do it better. Part of the product depended on how the people writing the growth policy sections gave the reasons.

Steve R said he seemed to get confronted by neighbors and acquaintances that didn't want to ever see zoning. He hoped Wally was right. He was very concerned that if they got rid of this DMR, they wouldn't see it again. Wally thought that was a comment they needed to make as a Planning Board to the County Commissioners or to the public record. That was important. Steve R asked for other comment on the DMR before they moved on to turning in names, understanding procedure and so forth for the growth policy rewrite.

Public comment opened:

Sue McCormick grew up in OR and spent years working to impose regulations. She wondered how a state or a collection of counties could be charged with the responsibility of growth policies and have nothing happen in eleven years. Where was the oversight? How did that happen? How could only 5 of 25 things be done? LaDana said the state said to have a plan. It didn't say you had to do something with it. They didn't look to see if you'd done a plan. Sue said that was unconscionable. Wally described some history. When she asked how they got away with it, there were two reasons. There wasn't a consistent Planning staff that had a toolbox who wanted to redo it at the county and there was no demand for subdivision, housing or special improvement districts because the economy crashed. The other part of it was that nobody had to. Apathy wasn't just that regulatory officials didn't do it; the public didn't show up for a lot of it either.

Public comment closed.

Motion made by John Fleming that the Board recommend withdrawal of the 'Resolution of Intention to Repeal and Revise the Lake County Density Map and Regulations' to the County Commissioners during the process of upgrading and revising the Growth Policy.

John hoped this motion would say to the Commissioners that the Board did not support their resolution of intention to repeal and revise the DMR at the time they were working on the growth policy. He wanted to let the Commissioners know what the Board would like.

Rick said he wouldn't support that based in part on Wally's rationale, which was well laid out. He wasn't anxious about the Commissioners' action although he might be more motivated or anxious to go faster. He didn't see the necessity of this at this juncture. Steve R confirmed with Rick that he was willing to spend a period of time with no DMR.

Bob S interpreted Wally's advice differently, as it wasn't a bad idea to let the Commissioners know how the Board felt. Rick said they didn't have a leg to stand on. Wally thought the Board should let the Commissioners know what they thought. Their mission as a Planning Board was to give (nonbinding) advice to the Commissioners. They needed to tell the Commissioners what they perceived and wanted. They shouldn't be afraid to go to the Commissioners' meeting to discuss it and provide them the information that they have. That was their job to give advice,

decisions and input to the Commissioners. It would help them to have the minutes for why. LaDana suggested that he write a letter. The meeting date was changed today to January 20, 2016 at 10:30 am instead of next week.

Bob S rephrased his question. Was Wally's advice to have or not have this motion? Wally didn't think the motion was unwise. He pointed to the handout on due process (see attachments to minutes in the Dec. 2015 meeting file for handout) and the appearance of fairness section to help describe the problem he had with the motion. It was good to provide input on what the Commissioners should or should not be doing. The problem was if they provided that before they went a lot further in terms of rewriting the growth policy etcetera, did they really have all the facts and information to make the conclusion to repeal, don't repeal, revise first or whatever? Did it appear not to be fair because the jury wasn't in for them yet because they hadn't had a public hearing yet either? He advised they needed to give their input for sure so the resolution or the motion wasn't necessarily inappropriate. It was how they wanted to do it. Beware of the fact that on the issue of policy, did they really want to make that advice before they got the rest of the stuff gathered up that they wanted to have or did it appear unfair that they had an agenda before the facts all came in. If it looked like they had an agenda before the facts came in, those coming before the Board later would say it didn't appear to be fair. Board members gave various responses.

Steve R referred to the Commissioners resolution to repeal the DMR with no public hearing or Planning Board discussion, which might be why the Planning Board questioned their decision. Wally read from the resolution of intention and explained it was a resolution of intention to repeal. They hadn't actually repealed it. Bob S was concerned since the wording conveyed to him that the Commissioners had no intention of seeing [another] density map. Generally when someone brought a problem up, they would tell both sides of it. He felt that Gale's arguments were one sided about why they needed to get rid of the DMR. He was convinced that Gale already had made up his mind. He referred to the fairness section.

Rick said the fear of litigation was something to consider like the weather. Wally's advice sounded well-versed. As far as the document, they were going to try to revise it and make it better. It was almost semantics at some level. This thing needed to be redone. Wally had made it clear that they couldn't defend it as it was. This was a reoccurring theme. Wally noted he was very careful about picking his fights. If they got sued, lost and it got repealed, that brought the worst case scenario. He wasn't afraid of being without it. They still had subdivision regulations and the rest. The problem was if it got whacked before they got the other parts of the puzzle put together, that was the worst case scenario.

Rick asked how the County would be viewed if they carried on the course suggested by the Commissioners. What kind of position were they in, if somebody brought a lawsuit while they were actively trying to address this? Wally said at that point in time, he wouldn't just defend the question of density but to leverage it for as much as they could to minimize the damage and harm and get corridors, waivers, RSIDS and so forth. You got the extraction not by saying this was density but with design standards, better setbacks, better mitigation strategies and so forth. When they ask how much he would help write, what he would do was help them extract stuff to the point where people agreed. That was what he believed they needed to be doing. That was

why he delighted in their discussion of the Lake Mary Ronan dock. They extracted what they could, not with help from other people but they used their heads, stepped up, talked and they weren't afraid. They needed to do the same exercise on these. A simple density number didn't get you a corridor.

Steve R brought up Wally's comment that through the subdivision regulations and the growth policy, they could manage and protect the wildlife and the environment and prevent haphazard growth without the DMR if those were rescinded for a period of time, until they got something else in place. If so, Steve R said he would appreciate if Wally could put that package together for them and get on the agenda for the January 20th meeting. He didn't think there were many people who believed that could be done. Their concern about getting rid of the DMR was exactly that: without it they couldn't protect the environment, the wildlife or prevent haphazard growth. LaDana asked how that was happening now with the DMR. The document said it only applied to the creation of parcels. If she wasn't subdividing, could she put 5 houses next to her neighbor in a density area? Nothing stopped her from doing that the way the regulations were written. That wasn't the interpretation that the planners took. They made it work but that wasn't legally defensible. Steve R said that was because of the assumption of one unit per parcel. Steve R thought these were issues that would be very important to be presented [at the meeting on Jan. 20]. A lot of letters were being written that showed the concern that they couldn't protect wildlife and so forth.

Wally said one of the four things he gave to the Commissioners that other counties did for a conservation easement was if someone next to the easement was going to subdivide, that development's owner needed to comment to the County so they could regulate what happened where he indicated and how it impacted. He wanted those in every easement in this county. The county had the authority to regulate how this affected wildlife if you commented. He gave other examples of bear corridors. Just the density number didn't get them where they wanted to go. Bob S checked with Wally that the example had to be addressed in the growth policy for sure so it could be plugged into both the subdivision regulations and the DMR. Bob S thought that was great. He thought the board was for doing what needed to be done to make the growth policy better and workable. He'd like to see that reflected in a DMR. The board's fear was that they would never get a DMR and would have to do it in a haphazard fashion that probably was cumbersome.

Wally said by law, the subdivision regulations had to be implemented in a manner consistent with the growth policy. If their growth policy said the DMR with its [inaudible] for the purposes of subdivision development etcetera was this map and development to the extent possible needed to be consistent with what the map proposed, with bonuses for conservation, open space, wildlife habitat and whatever they were, then they got to the same place without a zone through the subdivision regulations. You couldn't create a parcel without a subdivision or a court order. This didn't give just one per 40 but got them the other stuff they needed. He gave some examples of things that would be included when they broadened the toolbox such as the ability to have a building envelope.

Bob S said he was asked by those unhappy with the DMR what good they'd done. His answer was they wouldn't know because they wouldn't know how many people didn't do things because

of the DMR. They only knew about the people who came in to complain. John said when they did the DMR, one of the objectives was to have predictability so people could know what they could or couldn't do in a particular area. Bob S asked if they could still encourage clustering near centers of services. Wally said yes, the growth policy and the subdivision regulations needed to encourage that. LaDana said the capital improvements plan that the county didn't have was the other piece that went with that. Wally added the cities also. They needed that other piece that would be a component and one of the tools in the toolbox. Wally said there were a whole lot of ways to accomplish what the DMR was trying to do through a different door. John could see that. He thought that getting rid of the DMR was like throwing your ace on the floor during a game of cards. The Board members commented.

Steve R knew a lot of people who said they didn't want the DMR telling them how much they could subdivide their property. Now they would be telling where to build the house and whether or not they could have a fence as well as how much they could subdivide. He guessed those people would like that even less. LaDana said they were already telling them that when they were subdividing. They came in with a plan of where they were going to build and [the county] told them they had to have fences to comply with state law. Wally said they couldn't have a fence that didn't keep their dogs in. Steve R asked who would design an appropriate fence. LaDana explained Fish & Game already did it. These things had been done and [the County] just needed to bring them in.

Bob S thought this highlighted that the staff knew more than the Board members or the people they knew. He was impressed with the idea to bring in the public but he didn't know how to get them to write. Wally said in Beaverhead County that they had people come to soup and coffee in January or February. Maps were available, and the people were asked for input. He and the staff had tools in the toolbox but they didn't have the facts that justified the reason why. Average guys knew things about the local situation.

Steve S pointed to capital improvement plan as an item that didn't get done on the list. Why did they think it would get done this time? Wally said the Planning Board and Commissioners needed to hold people accountable to do it. For example, he listed entities with sanitation systems to whom the County would need to talk. It wasn't the Board that did it but the Board made sure they did it. Board members said they didn't have that authority. Wally said the Board couldn't make them do it and gave an example of how when the need was public in the newspaper, they would get it done. The reality was he would probably end up talking to the lawyers of the cities and towns to explain what they needed and why, and how the County would help. Part of the time, the mayor talked to the County Commissioners, part was Diana (Lake County Environmental Health) talking to their septic and sewer guy and part was the lawyers talking.

Steve R returned to the motion on the floor.

Motion seconded by Bob Stone. Motion failed: 3 in favor (Steve Rosso, John Fleming, Bob Stone) and 3 not in favor (Rick Cothorn, Sigurd Jensen, Steve Shapero).

Motion made by Bob Stone, and seconded by Steve Rosso, to recommend to the County Commissioners that they begin negotiations between County sanitation department and the cities, towns, sewer and water districts and the Tribe. Motion carried, all in favor.

Steve R checked that they were ready to move on to the next topic. LaDana directed that the Board members should give their four names to Lita or her. Steve R said people could edit it in some existing components of the growth policy. They didn't have to do it from scratch. Bob S suggested they would need to back up their suggestions with facts and with why. Steve R said a lot of the numbers, facts and statistics could be researched by the staff. LaDana said the information was out there. They just had to go to a source and get it, if they knew it was needed. Wally gave examples such as someone in the Swan might know how many miles they needed for a snowmobile road or how much wood was needed for a wood permit to run a stove, which were personal and down-to-earth facts where the people would have a way to give the information needed.

Wally asked if there was a reason why they couldn't do the January meeting at 6pm and do something like the soup and coffee/tea and maps to kick the whole process off if the Commissioners were game for this. LaDana thought they might possibly have other board business in January. The Board of Adjustment met on the same day at 4pm and the length of that meeting was unpredictable. Steve R thought it might be possible to plan for another night or time. Maybe they could plan two evenings. That was similar to what they'd done when they'd generated zoning regulations. People were invited to an evening session in the local area. It was a community gathering as well as a work session. Wally said it tended to get people to talk. Bob S thought if it was in January, they should probably do something separate for the Swan. Wally said if it was appropriate, it could be done in a handful of places and times. You put the time in to get the help because the help to the county was worth a ton and the help for the product quality and information was critical to make this defensible. LaDana noted staff needed to know the help would be there when they showed up if staff were sent out. Steve R thought it would help if the board members turned in contact information and location along with the names. LaDana observed the board members could also meet with their groups.

Bob S said he had people willing to help with the preservation of farmland. They asked him exactly what he wanted and he said he'd get back to them. What was the answer? Wally said agricultural land wasn't all the most fertile land. The USDA mapped prime agricultural lands years ago. If there was no water, no access or whatever else, it wasn't prime farmland. You couldn't produce with it. The USDA's definition of critical or prime soil was fine but that didn't mean it was agricultural land. Agriculture, by definition, required someone to be doing something with it. Otherwise, it was open space. The key was not to just identify what the land was. They'd like to preserve the best irrigated, most efficiently run, best quality soils and most water efficient. It was one thing to say you were going to preserve agriculture and set it aside but you also had to make it available for agricultural production with an opportunity for other producers to do so [inaudible] with an agricultural management plan reviewed by the Commissioners every 5 years. You preserved opportunity. You could tell the people on the farmland that it wasn't just about the question of which was the best land (although they'd save it if they could), the best water and the best soil type. The other part was to preserve the opportunity. That was a critical part. Bob S asked if the benefit of having that in the growth

policy was to use it as a more valuable set-aside. Wally said exactly and gave examples. The issue of opportunity tied into the other extractions they could do and other economic development decisions. It was tremendously powerful.

Bob S checked that when someone wanted to put in a subdivision on 40 acres, it didn't matter whether it was then in production. It was whether this developer was going to designate it as agricultural, meaning there would be an opportunity to farm it. He checked that if he designated that as agricultural, he would be able to put more houses on it. Wally said he'd get more houses but the houses would have to be located over here because, for example, the tractor wouldn't be able to turn around if the houses were scattered. The way they preserved opportunity and saved habitat for the wildlife was there was enough open space for the corridor, too. The issue of how they were saying ag mattered was also wildlife habitat, fire suppression and the other things. The dots were connected if you looked at the whole picture and put the stuff in the growth policy to do it. Bob S confirmed with Wally that he'd add in the swather turning in the half page. Wally said you could do this stuff progressively if you had the reasons to do it. They couldn't extract if they didn't have the reasons. Bob S asked if the definition of extraction was getting money. Wally thought the definition of extraction was getting stuff. They wanted open space for wildlife, clean water, water filtration and swales for the stormwater flow and this was stuff. He didn't want fertilizer dumped in the local creek bed or running down and screwing up the algae blooms. He didn't want those things going wrong and those were extractions that could be put on there if they had a reason why ag was so important.

DISCUSSION ITEM – RIGHT TO FARM (9:28 pm)

Wally thought right to farm was the most critical thing that rural counties did before they wrote a growth policy because it was a statement about stuff. The Montana constitution was unique in mentioning agriculture, a right to a clean and healthful environment, and a citizen's individual responsibility to keep it that way. Right to farm was a broad policy cut. He referred to the document entitled 'To Play the Game, Bring a Team' (See attachments to minutes in the Dec. 2015 meeting file for document.) He read portions from the document and Montana statutory reading. Agriculture was still the number one business in Montana. He gave an example of abuse of the language in the Midwest. It was a different deal in Montana. The ordinance said that they had an obligation as a county to encourage agriculture, gave a commitment to education about that, integrated planning efforts regarding agriculture and related activities and facilitated agricultural opportunities and related benefits to the community. It wasn't just a commitment to save farmers. It was a commitment to education of everybody. It also taught farmers that they didn't have the right to overspray onto the neighbor's roses and kill them. He didn't have the right to let his agricultural farming practice screw up the water that ran on somebody's property and kill the fish in their outdoor pond. He didn't have the right to have a GMO peach that infested his neighbors' non-GMO peaches and screwed up their cross-bred peaches so they couldn't sell them because they were now a genetically modified organism. It wasn't just the obligation of the public to control their dogs, it was also an education of agriculture to not screw up the neighbor. It was an obligation of education for a two-way street.

Wally turned to the second page and 'Right to Farm – What It Does'. He read from it and gave examples. He reminded that the cherry orchards were agriculture. They were trying to preserve agricultural activities and appurtenances (which were things like the feed mill, the grain mill, the

cherry plant, etcetera). They were supporting the economics of agriculture as well as agriculture itself. He mentioned the potato chip company that used to be here. That was local agriculture. This said they didn't just support raising potatoes, they supported appurtenances thereto, and those things which were ancillary to ag. He read #3 on pg. 2. Minimizing conflicts between ag and non-ag users gave the reason for extractions in the subdivision regulations, why to have building envelopes and why they got to build setbacks for lights, corrals and pens. Right to farm was a Commissioner statement that said they were trying to minimize conflicts. He continued to read through the list on pg. 2. He mentioned aviculture (raising birds) and the 2 chicken farms in the county, apiculture (bees), horticulture (flowers and plants), aquaculture (fish) and silviculture (Christmas trees, logging, tree farms, raising landscaping trees). He mentioned that elk liked the ground that cows had grazed and gave examples, including a video about Fleecer Mountain called 'Landscapes' by Fish, Wildlife and Parks. It wasn't just about the issue of agriculture; it was tied to a whole bunch of other stuff.

Wally said this wasn't like the DMR which said you got 1 per 40. Right to farm was two things. Your neighbor had an obligation not to shoot your dogs or chickens. At the same time, you had an obligation to not have your evil horse named WidowMaker break down the fence and throw their dogs around. He talked about sample county right to farm ordinances. Lincoln County particularly encouraged silviculture. Wheatland County was a little more traditional.

Steve R asked where the differences in the two sample ordinances were, besides the font. LaDana said she did locate a difference. Wally said none of the ordinances in the state were exactly alike. Since the Board members got an unsigned version of the ordinance, it might not have been the final one. There were still changes in it. He would get them the final version of Lincoln County's version. The group talked more about the samples. Wally highlighted that in Wheatland County on the last page, they encouraged ancillary agricultural activities, which matched #6 at the end of the Lincoln version. Steve asked where Whereas.d on the first page was covered in the actual document. Wally pointed to 2.e on the third page. It said part of that by the route of saying they were going to have design standards and so forth. LaDana pointed to the extra words at the end of 2.e in the Lincoln County version. Wally noted right to farm was the first real Commissioner statement to say they supported agriculture and believed in it. It was the first broad statement that wasn't the growth policy. If someone wanted to strike down part of the growth policy, you had two things supporting agriculture and extractions. Steve thought that Whereas.d on the first page was part of what the DMR helped do. Wally said that was the thought and purpose, in part. The problem was that it didn't. It just said this was the number you had. What mattered more was to say it in subdivision regulations and the rest, and the opportunity to do so would be there.

Steve R asked where they needed to go next with this. Wally said to give a little time to add and subtract from what they had. They could make suggestions as the Planning Board. If they supported doing it, they could tell the Commissioners they'd gone through it and worked on it. Steve R checked that they would go home, mark up one of the Right to Farm examples, bring it back and Wally would combine those into a draft to present to the Board to review and decide about recommending or not. LaDana said those could be emailed or mailed back to Planning. Steve R asked for one of the documents in a Word file. LaDana said she didn't have that currently and would check into it. It would also be fine to just mail through the postal mail.

Wally said there were other creative things they could put in there. For example, the right to farm included or sought to encourage minimizing conflicts. Things like preservation of fences on roads and controlling pets, which chased wildlife or livestock, was really important. If they had ideas like that to throw in as examples of how-to, that was fine. The more of those they got, the more they could plug into the growth policy later, and the more they could plug into the issue of subdivision regulations, density maps, zoning and so forth. Supporting those concepts in it gave them a whole lot more horsepower as they made those regulations later. Steve R asked if Wally had reviewed the existing growth policy as to whether or not it supported a right to farm ordinance right now. Wally said it supported it well enough. It mentioned agriculture but it didn't say a whole lot. This was a whole lot more progressive. It had enough to do it. There was no requirement for the right to farm to be consistent with the growth policy. What he liked was to use it the other way. It was a way to say the growth policy was consistent with right to farm as a statement of the County to support agriculture. If you made the commitment to right to farm before you said you'd do planning regulations, it was easy to get [inaudible] in the growth policy. The Commissioners knew the Planning Board was looking at this. They believed it was important to get the Planning Board's input on stuff like this. He thought [the Commissioners] were keen to listen at this point in time to get ideas. Rick asked if predator management was noteworthy and Wally said those were important comments to make.

OTHER BUSINESS

There were openings to be filled yet on the Planning Board.

Motion made by Rick Cothorn, and seconded by Steve Rosso to adjourn. Motion carried, all in favor. Meeting adjourned at 9:58 pm.