

LAKE COUNTY PLANNING BOARD
July 8, 2015
Lake County Courthouse, Large Conference Room (Rm 316)
Meeting Minutes

MEMBERS PRESENT: Bob Kormann, John Fleming, Sigurd Jensen, Janet Camel, Steve Rosso, Rick Cothorn, Steve Shapero

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

Bob Kormann called the meeting to order at 7:01 pm.

Steve R offered a correction to the minutes of May 13, 2015 on pg. 2, where in the second line of the last paragraph, 'bases' changed to 'based'. **Motion by Rick Cothorn, and seconded by Sigurd Jensen, to approve the May 13, 2015 meeting minutes. Motion carried, 6 in favor (Bob Kormann, Janet Camel, Sigurd Jensen, Steve Rosso, Rick Cothorn, Steve Shapero) and 1 abstention (John Fleming).**

LaDana introduced Planner Jacob Feistner, who had been with the department for almost a year.

MISSION VISTA II SUBDIVISION (approx. 7:04 pm)

Bob confirmed with LaDana that the Board would vote on the variance first.

Jacob Feistner introduced Johna Morrison, who was here from Carstens & Associates to represent the land owner, Brandon Bick. He presented the staff report. (See attachments to minutes in the July 2015 meeting file for staff report.)

Janet asked if this was a part of the original Mission Vista subdivision. Jacob clarified it was not. Both were originally part of minor subdivision SP-05. Janet asked if the covenants just applied to the split parcel. LaDana replied this was unclear. It didn't seem like those would apply but a lawyer would probably have to say at this point. Janet observed if the covenants applied, article 8 specified lots could not be further subdivided. LaDana said if that was the case, they might need to amend the covenants. Janet gave a name correction for Flathead Irrigation Project (FIP) which had always been Flathead Indian Irrigation Project (FIIP). She had concerns on fire.

Regarding fire, Steve R asked whose responsibility it was to maintain Mission Vista's pond and dry hydrant. LaDana didn't know. Installation was a requirement in the approval and the developer paid money. It was done, then taken out. Steve asked who enforced the covenants for Mission Vista. LaDana didn't know. Especially back in that era, [the planners] didn't know if home owners associations got formed. Currently if there's a new subdivision, [staff] made sure that when it's filed, the bylaws and articles of incorporation were done. Back then, it wasn't necessarily done until lots were sold. Hopefully the homeowners would then incorporate and do what they needed to do. It was hard to say if this had an association. Steve asked what kind of confidence there was that the covenants could be relied upon as something to justify approving this subdivision. LaDana suggested asking the agent. Covenants were not required for a

subdivision, although they were often seen to mitigate impacts. Perpetual conditions addressed a lot of the things that the County wanted to make sure were addressed. Bob asked if they'd had a subdivision that didn't have covenants. Staff affirmed, especially for recent first minor subdivisions.

Steve S pointed to an enforcement clause in article XI of the CC&R's. It implied the owners of the lots had signed the CC&R's to be included. He didn't see evidence of that. It said they were enforceable through law. LaDana said if they owned a lot, they became a party to it. Steve S said if they agreed to it. Usually as a standard part of the sale of the property, you agreed to the CC&R's as a standard real estate thing. It didn't show here whether they were or not.

LaDana said these were old covenants. Current staff knew these were recorded and that was about it. Steve S checked if the developer was the same. LaDana clarified it was a separate party.

Steve S asked if they could approve this without the fire issue being resolved. LaDana said the Board needed to determine what the issue really was. Was it the developer's responsibility to provide all the facilities needed to serve the Valley View area or when did the fire department say they needed facilities in certain areas and plan how to get there? Instead of a plan, the Planning Department got letters specifying things like a need for a 30,000 gallon cistern and a 4-lot subdivision will provide it. You had to be able to justify the impacts from the 4-lot subdivision for a 30,000 gallon cistern. Staff had a difficult time justifying that. She agreed there was a definite issue that needed to be resolved. It was for the whole area, not just the subdivision. It didn't seem reasonable for this developer to be required to bear the whole burden of this. The developer and agent came up with \$1500 they were willing to set aside to help cover some of the costs but not pay the whole cost. Steve S checked there was no agreement between the developer and the fire department to resolve this issue. There was the offer by the developer but not agreement, so it was unresolved as far as the Board was concerned. LaDana explained this wasn't typically something that would be resolved by the time of the Planning Board meeting. The applicants put out a proposal as their way of mitigating and it was up to the Board to review that and say whether or not it seemed reasonable.

Steve R returned to the covenants. Were there subdivision requirements that the covenants would meet if they were a part of this subdivision. Were there subdivision requirements that would have to be met another way if these covenants were not involved? If the covenants weren't needed, why were they mentioned in the report? LaDana clarified the applicants proposed using the covenants that existed already. Johna Morrison said these were not to meet subdivision requirements. She would discuss them when she spoke.

John mentioned these 40 acres were once owned by the same individual. Was it known who disassembled the irrigation pipeline? Did FIIP release land? He understood that they did not. Robert said that it was very rare. It usually had to go through the Board of Indian Affairs with the federal government. John said it did incur a cost to the other ranchers and farmers. The expenses were the same with fewer acres to pay it. LaDana said they hadn't gotten comments from FIIP on this proposal. That was part of the issue. There were no comments to say whether they could provide water. Some of the lots in Mission Vista 1 had come out of the project.

Bob observed that the variance was not to do the plan. If water got brought to the property in the future, then they had to do a plan. LaDana said if they got comments that FIIP could provide water to them, then [the applicants] needed to demonstrate how they would get the water there. At that point the variance didn't seem appropriate. They should be getting the easements in place, setting up the irrigation plan and getting the infrastructure installed. Bob asked what would happen if that happened a few years in the future. Did they have to come back and do a plan? LaDana said they would have to, at that point. Bob asked how that worked. LaDana said usually if they didn't have [water], they'd get comments that said so or they'd have to come up with the plan now. Bob checked that historically, they hadn't gotten FIIP comments. LaDana said for some recent divisions, they had received comment. For this one, staff hadn't even gotten a mail receipt demonstrating that FIIP had been contacted. Janet confirmed with Jacob that the river was less than ½ mile away to the west. Johna pointed it out on the map. Bob asked where Valley View School was located. Johna said it was quite a distance. She described the proposal location.

Steve R suggested future location maps might cover a larger area so they could see where some landmarks were located. The group discussed various features and landmarks in the area.

Janet checked how far the 40-acre density extended from the river boundary. She thought it might be ¼ mile. LaDana said [this project] was definitely not in the 40-acre density. Jacob said 5-acre density was above Valley View Road. He described where there were a 40-, a 20- and a 5-acre density area in the vicinity.

Johna Morrison of Carstens & Associates spoke about the application. Regarding the covenants, they were under the assumption they fell within the Mission Vista subdivision covenants because of the way the covenants read. They definitely had to be involved in the road maintenance plan. That was definite when you read the covenants. She thought this property already fell under the covenants, so subdivisions beyond would fall within the covenants. It came down to getting a lawyer's interpretation, as LaDana had said. They weren't against the covenants. If the Board felt they needed to be a part of the covenants, they'd put that they were subject to the Mission Vista covenants on the face of the plat. That wasn't a problem.

With the irrigation delivery, Johna said initially they didn't know this had been irrigated at some point. She showed the locations of subdivisions of the original subdivider (Knutson), where the main line for his irrigation ran and where the delivery point was. She showed the route along which the fire suppression pond at Mission Vista was fed. She heard that he decided he wasn't going to supply water and disassembled it. You could see it laying there through the whole route but you couldn't trespass to see where it went. She didn't find easements in her research for that water. There was no way for Mission Vista to get a water supply unless he was willing to give them the easement. She didn't think that was possible. Her understanding was that there was a new owner of the property. [Her clients] would love irrigation water but they couldn't get it at this point. They didn't want to give up the idea that maybe they could get irrigation water. That was a plus and they were paying for it whether they could have it or not. They put an irrigation plan together in hopes that maybe someday it could be irrigated. They probably couldn't get water.

Janet asked if they sent a letter to FIIP. Johna affirmed. [FIIP] was in a state of transition and nobody called her back. Johna thought that was part of the preliminary approvals. They had to get together with the irrigation district at some point and resolve this before the final plat.

Johna turned to fire suppression. She tried to work with the rural fire chief on the wildfire interface of this project and found that difficulties appeared to exist between the rural fire chief and the property owners. The unfortunate situation for all of Valley View, probably 350 homes, was they no longer had the [prior] fire suppression source. They'd have to go to the nearest hydrant for filling tanks to bring water. She said the fire chief had changed. She planned to talk with the new chief to try to resolve this and to try to get moneys appropriated, maybe to put a 30,000-gallon tank at the Valley View School or somewhere in a locale that would serve everybody. She suggested it could be maintained by the fire department so they'd know it would consistently work when they needed that flow. She wasn't against fire suppression but she was against a 30,000-gallon tank that just these people [in the 4-lot subdivision] would get. It should be for the community as a whole. She and the applicants decided to see if they could work out a deal where they started putting money (\$1500) in a fund, and maybe she could talk to the rural fire department about appropriating fees, then making sure that every subdivision after this put their money in the kitty so they could take care of this problem. It bothered her that these people didn't have fire suppression. It seemed like it should be a fairer shake of everyone helping out with the problem.

Janet asked about response time from Polson. Johna said it was 9 minutes. They filled from a hydrant, not the river; it was a pressure situation. It took approximately 7 minutes to get to the nearest hydrant. She thought it took 7 to 8 minutes to fill the tank and there were 4 tankers. They could supply water consistently through the whole period of a fire fight with the tankers. Janet asked if people would be notified that their fire insurance would be expensive. Johna identified two people she spoke with who had pretty hefty fire insurance. Steve R said it might be an opportunity for people to possibly improve their fire insurance rating if they had closer access to water, if each of the home owners contributed a little money to this big holding tank. Johna said the fees they paid to the rural fire department could go into a kitty. She didn't think it would take long to get the money together. She couldn't imagine that the Valley View School would have an objection to burying a tank on the property.

Jacob gave a response time between 6 and 15 minutes, according to the fire rating from the fire department. Janet asked if you could do a Rural Improvement District (RID). LaDana said you'd have to get enough people to sign on to it. Steve R asked if there could be a condition like with road improvement, where they couldn't protest the formation of an RID to create a fund for the holding tank. If the developer gave money now, LaDana didn't think they'd still be required to waive. Maybe that was a discussion to have with the Commissioners if that was an option for this area. It was a big issue. Johna said she'd check into [the RID's]. She planned to have a good talk with the new fire chief. She was concerned about the situation out there.

Sigurd mentioned [the Board] previously required \$100 per lot. LaDana said she recently saw comments from the MACO attorney with concerns on that and needed to talk to the Commissioners about it.

John asked how close this subdivision was to being not sufficient. He wasn't suggesting it [wasn't sufficient] but it was an opportunity to think about this since there seemed to be a lot of unanswered questions. LaDana clarified it went back and forth and they worked with the developer. A point was reached where they weren't getting more new information. The Board could make a recommendation based on whether or not they had enough information. Staff tried to get as much information as they could. Sometimes there were still holes. Johna asked what else to do when you couldn't deliver irrigation or reach FIIP and you couldn't talk to the homeowner? They looked to the Board for suggestions on how to handle the situation. Janet asked if they'd looked at getting an easement from the west. Did the ditch drain into the river, based on the green on the map? Johna said the owners were from out of the country.

Bob closed public comment. The variance regarding the irrigation plan needed to be considered first. Discussion returned to the irrigation plan. Johna clarified the irrigation plan was not approved by the FIIP. Janet suggested a wording change. She didn't want to say they didn't have to have the plan. LaDana thought this may have been covered in the conditions already. They needed to get comment from FIIP. Jacob said they needed to have a variance or a plan. The variance was based on water not being available. LaDana pointed to conditions #13 and #14. Steve R observed there wasn't something here that said after the variance was given, if they found they could get water, they still had to come up with a plan. Jacob agreed. He hadn't contemplated that idea. Robert said if comments were received from FIIP, those comments would indicate if they had future plans to do something here, if there was potential here. If the comments came in, then they would know. If comments weren't received, then they would know they weren't approved to have a plan. Steve R thought #13 said if a variance was granted, they didn't need a plan no matter what. LaDana highlighted portions of #1 on pg. 20. Jacob summarized that the variance was contingent on FIIP saying that water was not available. LaDana thought additional wording might be needed in #13. It was tied to the variance approval but the variance approval wording might not belong.

The group further discussed the situation and the wording and various possible changes. Janet thought #14 might need rewording as well. LaDana thought the wording might need to be on the final plat and the irrigation plan. The group worked through and arrived at wording for #13: *"Prior to recording the final plat, the subdivider shall either obtain documentation from FIIP that irrigation water is not available, in which case the variance is in effect, or if water is available, comply with Section X.X, X.Y, and X.Z of the Subdivision Regulations."* John asked if #14 could go away. LaDana explained conditions couldn't be added later so if something was possibly needed on the plat, it had to be added now. Steve R thought this was a good statement to have on almost all plats within the irrigation project. It would remind people that if you lost the water you had, it didn't mean you could stop making payments. Sigurd asked what happened if FIIP didn't respond. Janet thought they eventually would. You could also go to their office and ask to meet with the manager to resolve it. It was a pain but sometimes you had to go above and beyond. There weren't these irrigation requirements years ago.

John asked why the word amendment was in there. Robert said the plat needed to be changed to include that. It wasn't in there now. Both the plat and the irrigation plan would be amended.

LaDana said the draft plan might need to be amended depending on what kind of a plan they came up with.

Steve R read the revision to the first portion of condition #14: “Prior to recording the final plat and irrigation plan, both shall include the following statement:”

Bob checked that these changes would go with the final vote on the subdivision rather than on the variance vote.

Motion made by Steve Rosso, and seconded by Rick Cothorn, for variance approval. Motion carried, all in favor.

Janet checked that the correction from FIP to FIIP would be included. Bob and LaDana confirmed. Bob said the rewording on #13 and #14 would also be included. Steve R asked if condition #9 or rather #10 needed expansion so there was a plan to make use of the \$1500. LaDana said the plan was just for this property. It didn't have to do with the \$1500. Subdivision regulations required a fire prevention and control plan. Steve R thought the plan might include the future establishment of a cistern. Robert said this [plan] tended to be more like a best management practice document with things like distances to structures, thinning vegetation and so forth. Janet asked if they could add “in the Valley View area” to the end of condition #9. John thought having it next to the school gave an identifiable place but he didn't think they needed to specify [the place]. They could let them decide. Steve R thought it was hard to require this little developer to organize the entire Valley View community on a fire suppression cistern. It would be great to say somewhere that some effort needed to be put in to establishing, talking about or doing preliminary work that might be continued by future developments so [the Board] had some confidence this wouldn't just be forgotten about. LaDana suggested they could write that into the Commissioner Staff Report and highlight that. If [the Board] wanted to provide a simple letter to go with that to say they wanted to see this happen, it would be good for the Planning Board to write a letter of support. Sigurd thought they were saying that when they said a suppression tank in the Valley View area. Johna planned to talk further with the fire chief. Bob asked if anyone spoke with Steve Hughes about donating some money. LaDana suggested Bob could call him.

John said putting water out there somewhere was a recurring theme since the first subdivision by the landfill. Steve R referenced a comment on road access that Valley View Road might not meet subdivision requirements either. The road in condition #6, Mission Vista Drive, had a hard surface. LaDana referred to condition #28, which addressed the RID and waiver based on the impacts of the subdivision. This was a typical condition used with minor subdivision.

Motion made by John Fleming, and seconded by Sigurd Jensen, to accept the findings of fact for Mission Vista II subdivision and conditions as amended at this meeting. Motion carried, all in favor.

OTHER BUSINESS (8:07 pm)

LaDana explained the Commissioners had asked that the Planning Board have a public hearing for the Density Map and Regulations (DMR). Those were supposed to be reviewed after a year,

and then again after 5 and 10 years. She couldn't find evidence of the one-year or 5-year reviews. This was the 10-year point and the Commissioners wanted the review to be done. She had worked with the county attorney to go through the document. They had been in contact with the MACO attorneys. There were a lot of land uses in the document. The regulations listed that they were null and void if land use was included. Things like conservation easements and designations as agricultural lands were land uses. They needed to have a discussion of what the document should be. The document as it was didn't function. She hoped this Board could have discussion and make some sort of recommendation about revising the regulations. The Commissioners wanted a recommendation from this Board.

Janet said the regulations should be cleaned up rather than scrapped. John mentioned only one person asked for a density change [since the DMR came into effect] and the Board granted that. He agreed they needed to review it. He was in favor of having a zoning density. He gave some history about why they came up with the document and why those Commissioners wanted the Board to hold the public hearings. Things weren't going well in Lake County. [Previously, Lake County] was being sued for what they did and what they didn't do. People came into the Planning office not knowing what the expectations were. Because of the Growth Policy, the Board wasn't allowing people to have more than one residence per 20 acres. The planners would have to tell people their plan was great but the Board wasn't going to accept it. The Commissioners supported the Board every time. The Board got tired of disappointing people and people not knowing. The Board had to treat everybody the same. There was no uniform playing field or expectations. People didn't know what they could ask for. It was a mess for the planners. Maybe this Board felt differently. [The Board at that time] was trying to maintain the agricultural and rural character of the southern end of the valley.

Rick commented that being said, some of the things heard [at the last meeting about the DMR] were fairly disturbing, such as not being able to have their own family members on a 20-acre parcel. John said those would be the kinds of things you'd deal with in a review. He cautioned that there were problems. [The DMR] didn't come out of nowhere. Mike Hutchins, Paddy Trusler and Chuck Whitson were the three Commissioners. They weren't flaming progressive liberals. They knew there were problems and that was intended to solve problems. If they'd done too much, then they could fix it. He had wondered why they hadn't reviewed it.

LaDana said the issues that came up after a year were still issues 10 years down the road. She understood that it was to give developers some predictability when they walked through the door. When she had people call now, she didn't know what to tell them because there had been misinterpretation. She spent the last week going through the minutes of every meeting they had on the density regulations. From what she'd seen, the interpretation they'd been taking for 10 years was the interpretation of even the planners at that [early] point but the regulations didn't say that. The regulations said this only kicked in if you were creating parcels.

LaDana asked John and Bob, since they were on the Board then, if they could explain what the thought was. If the regulations only kicked in if you make a new parcel, could she just keep putting houses on it? John said no. LaDana asked what kicked it in. John said everything was grandfathered. After that point, you had to say this was better than what they had. He was pretty sure the County grandfathered what was in existence and new parcels had to comply. He

suggested that Paddy Trusler knew this. LaDana stressed new parcels. If she had a parcel, she wasn't changing it and could get a septic permit, could her 5 brothers build houses on it? Janet said they could if you were doing a family transfer. Robert clarified the document specifically stated that it only applied to the creation of new parcel. If you were just developing a lot, that would mean if you were taking a strict application, that didn't apply to you. That wasn't the interpretation that staff took.

LaDana said they've allowed a unit on a lot. That wasn't what the regulations said although she thought that was the intent of the regulations, to limit the number of units on a lot. If it only applied to the creation of parcels, a lot of lots could continue to add structures and wouldn't fall under that regulation until they did something like move a boundary line, create a family transfer or subdivide. Janet said that was why they needed to look at the language. They could try to fix that. She probably spent 2 years on the DMR. The realtors she worked with liked the document. They felt like it gave them clear guidelines when they were selling a piece of property. She listed the exemptions where someone couldn't develop at a higher density unless they were clustering and reserving open space, or doing a family transfer. You could subdivide at a higher density for family members under the family transfer process. If you clustered and reserved a certain percent of it as open space, you could double the density. They were trying to protect wildlife habitat and open space, for which a lot of people move here. They were trying to preserve good prime farmland, which was being eaten up all over the country. They were trying to protect cultural resources.

Rick said the pragmatic view was that those were nice goals but at what level were those goals being achieved? Were 20-acre lots feeding anyone? Janet mentioned she'd heard mint was being grown on 20 acres. They went with 20-acre density because it was still being assessed as agricultural in the tax base. John related that Joe Potoczny was on the Board for many years. At his last meeting, he said that we didn't know what 20 acres would produce in the future. We didn't know what would be considered a farm in the future. Twenty acres might be it. They came up with 20 acres because there was a 40-acre parcel near 44 Bar that someone bought and wanted to subdivide into four 10-acre parcels. John's neighbors went nuts and he got the calls. The neighbors insisted that [the Board] do something. John looked into the Growth Policy, which did say they were supposed to maintain the agricultural character of the southern end of the valley. Two 20-acre parcels came out of the meeting instead of 10-acre parcels and the Commissioners okayed that. The Commissioners then came up with the idea for the DMR. They didn't call it zoning the first time they ran it through but it was zoning. It was density zoning rather than land zoning, and there was a difference. It wasn't how you used your land. You could probably argue that. It was a density zone. They had to have all of the meetings around the County twice because the first time the Commissioners didn't talk about it as a zoning map and the second time they did. It passed. It just hadn't been reviewed. He was surprised when he read the article in the paper. What Paddy Trusler said was right down the line. That was what was going on. John didn't know if they'd done the right thing—that was why you reviewed things.

Rick asked how that worked with what they were hearing at Lake Mary Ronan and Mike Maddy's plans. LaDana said Maddy did two 2-lot subdivisions, apparently to get investors. He made 160 acre lots. The lots have sanitary restrictions. Development was not proposed. Robert

added that was under Lake Mary Ronan zoning and not under DMR. The hearing was about 2 weeks ago. These were first minor subdivisions. Bob noted Lake Mary Ronan zoning was also overdue for review.

LaDana said all of those things were on the plate. With staff turnover, it had been hard to move forward on regulation updates. This was what they were trying to do now. The Commissioners had asked for the DMR to be brought forward and Planning was also working on City County zoning, which had been going on for 5 years and the City was pushing the County.

Steve R asked if a purpose paragraph would help the DMR. LaDana replied that it had one. Usually that didn't go inside the regulations, so this was unusual. Usually that got written in where you were adopting the regulations rather than into the regulations themselves. John asked how old the DMR were. LaDana replied 2005. John thought they argued on the Board for 10 years over this. He recalled Jack Meuli, who thought 20 acre parcels were too small to farm and didn't understand the 20-acre parcel was an average parcel size. Lita mentioned a successful farmer with a 17-acre farm. Some years ago at the Board of Adjustment, Jack M hadn't thought they could succeed with only 17-acres.

Bob said the planners could pass on to the Commissioners that if the Board was going to put their time into it, they wanted to see a beginning, a middle and an end to this. He gave the example that they now had totally different members on the Board than when the lakeshore regulations were started. If it was a matter of having an extra meeting or so they would probably be willing to do that just to complete some of that stuff. LaDana explained that the staff here didn't really work on those lakeshore regulations. They had to put it into one document and see what was there to even move it forward. Janet asked what was due first for review. LaDana replied the DMR review was due a year after it was adopted. The Commissioners asked that they work on those. The planners were finally getting caught up. They had three planners who could work on projects and get them to completion. Things were moving forward.

John mentioned a gigantic sign being put up. LaDana suggested telling the Commissioners. There were county sign ordinances that fell under the Commissioners for enforcement. LaDana said this was the second sign that Ernie Otoupalik had put up there. She'd gotten another complaint on it.

LaDana asked if the Board would like to start working on the DMR at the next meeting. She could share her marked up document to show what the issues were. It didn't mean that they scrapped it. She knew about the article that said it would be rescinded by summer end. The Commissioners wanted to go through the process. The Valley Journal didn't talk to her about the article that went into the paper. They talked to the Commissioners and put their own spin on it. Everything that happened with that set of regulations had to go through a process. Some board members had gone through this with the adoption of it. To repeal something, you'd go through the same process. It wasn't done overnight. John thought the article made a couple of the Commissioners look bad, to say it would be gone by the end of September. LaDana noted 2 people asked her about it since the article came out. That was it. She hoped people submitted comments. She confirmed for Steve R that they could have a work session without a decision and then another meeting where they would have a decision/ recommendation. Rick suggested

that if they had work sessions with additional time, maybe those could start before 7pm or in the afternoon. LaDana noted Board of Adjustment meetings were on the same day. It would almost have to be on a different night. Rick said he was up for that too. If they were going to do additional stuff, he thought they should start earlier.

LaDana mentioned next month there would be a lakeshore variance coming to the Board. Bob asked if the Board would prefer to have a meeting where they just dealt with the density review. John thought they could do both, and at least get started. LaDana didn't expect the Board to come up with an answer in one night. They could put some thought into it. John checked that LaDana would tell them where the problematic parts were. Robert said to keep in mind that they weren't set on what might happen. People were hearing rumors. They'd have comments and other ideas, and things that would stimulate a discussion. Steve R was concerned about having a Board discussion and a public hearing at the same time. LaDana said perhaps collecting more public comment was what needed to happen if that's what got [the public] here. Bob asked if it could be brought up in Other Business. John thought it would have to be in the agenda. Janet said they wouldn't be making decisions or voting. She asked if they could get the marked up copy a few weeks in advance. She could get lots of comments in favor of it. LaDana emphasized she wanted to know what it meant to people who were really affected by it, positively and negatively. Robert said they needed to hear from both sides in order to know how to make this work. Diversity of opinions was going to be useful. John suggested they could forget the mark up version and just take public comment the first time.

Bob said when they were trying to get this passed, Dave and Sue went to the public meetings in different areas. Janet mentioned she went with them. Bob thought if they really wanted public comment, the way to go was to go to [the public]. LaDana said that entailed additional staff time and overtime. She didn't know if the Commissioners wanted to go that route. It was a discussion she would have to have with them. John thought that could be pitched to them. LaDana noted in some of the minutes she read, 20% were for it and 80% were against it. Janet asked which meetings these were. She had video of the last two meetings where almost everybody was in favor of it. LaDana said nobody opposed happened to show up. Janet said there were multiple meetings where nobody opposed stood up and talked, or maybe one or two people. She offered to bring the video if they were interested. Those [video-taped meetings] were held in the large conference room. LaDana said those were the Commissioner meetings. Janet said she had video of people testifying in favor of it. John mentioned his one and only death threat. Janet said most people liked the open space and liked the valley to be rural in character. They didn't want it to be Missoula or Kalispell. That was why they lived here. Without the DMR, it would turn into the Bitterroot Valley.

John said the Tribes had a tremendous amount of input into [the DMR]. He asked Janet if they were interested again. Janet said they were very much interested. State law didn't affect federal land or Tribal land. They voluntarily complied with it. Their subdivisions were actually at a lower density in most cases. Within the high density area of Pablo, they did 1-acre lots rather than 12 lots per acre. They didn't feel the neighbors wanted to see 12 lots per acre next to them. They would still hook up to the Pablo Sewer and Water system and pay into that system. They were very responsible about how they went about doing their development. They wanted to see the reservation protected. Already the [non-Tribal] growth rate since 1910 was 10 times higher

than the Tribal growth rate. They couldn't sustain their cultures with pressures from non-Indian people telling them what they should or should not do with their land or their water. This was a difficult issue for her to talk about. She heard what happened to Tribal families who were impacted by non-Tribal families who came here and ridiculed them because they were Tribal, and called them lazy and drunks. This was a growth issue to her, too.

The Tribes wanted to see the cultural lands along the river and stream corridors protected. They went with the 1-per-40 density [to protect those lands]. They also did a land ownership overlay with those 1-per-40 areas. The Tribe owned the majority of the lands within those 1 per 40 density areas. That was how they were able to get that density approved by the Planning Board and by the Commissioners. Those were critical corridors for protection of cultural resources.

Janet talked about concerns and history. The Tribes' cultures were dependent on being able to hunt, fish and harvest certain plants in these areas. If they were destroyed by subdivision, then what did they have? What did their kids and grandkids have? She wasn't a Tribal member. She'd lived here for 26 years. She was saying that she heard this from [the Tribal] people. They owned the majority of the land but their population didn't grow ten times as fast as the non-Tribal population. [A lot] of non-Tribal people came here that didn't know about the history of the Tribes. They didn't know that this reservation was supposed to be for the exclusive use and benefit of the Tribal people. It was illegally opened in 1910. The Tribes had to fight for 65 years to go to court to try to get compensated for the lands that were taken from them. They spent sixty five years paying legal fees to be told that yes, their land was illegally taken from them and they had to pay fair market value to buy their own land back. The federal government didn't give it back to them, even though this was exclusively theirs through the treaty. To her, it was an injustice for the County to be saying 'oh, let's just open it up again'. That was why she was so passionate about this. She came here not knowing about the history of the Tribes and researched for herself personally. What happened here was a travesty.

Janet described that two thirds of the County was on an Indian reservation. [People] had to respect what the Tribal people were saying. They were the silent minority here. It was hard for them to come to public meetings where they were outnumbered by non-Indian people. It was hard for them to be part of a process where there were rules and regulations that they didn't have to follow but for the sake of the environment and for the sake of their culture they were willing to voluntarily comply with these regulations that were mutually agreed upon. That really said a lot for the Tribal people. They really were trying to be good neighbors and work with the circumstances they were given. They would love to be able to buy the land back. It made it harder and harder for the Tribes to buy their own land back when it was subdivided because it made it more expensive per acre. They only had so much per year to allocate for buying land. It was very frustrating for them. They didn't want to see the land lost or turned into homes they couldn't afford to buy back. They were trying to figure out how to work with the situation. That was why she was appointed to the Planning Board. They needed somebody to stand up for them and explain to everyone else what they were concerned about.

Janet explained the DMR were a way to protect those sensitive river and stream corridors, the buffer zone, the Mission Mountains and the farm land. They did a public opinion poll. The majority of the non-Indian people who lived here at the time of the poll, done through the

University of Montana, the majority of the non-Indian and Tribal people wanted to see groundwater protection, farmland protection, cultural resource protection, wildlife habitat protection. That was partly how the Growth Policy was developed as well. She and Dave DeGrandpre worked on the Growth Policy together. They both looked at these values in the public opinion poll and said yes, they needed to do something to address the public's concerns. That was a lot of the history behind the Growth Policy also. It maybe wasn't the side the Board had heard. It was the side that she was aware of. She thanked the Board for listening to her. She was passionate about this. It affected her family and their people.

Steve R said it might be interesting to have a draft at the working session where land use references were removed and it was just density. LaDana thought it might only be a page or so. Steve R brought up the idea of 1 dwelling per lot. If you had a 20-acre lot in a 5-acre density area, you ought to be able to put 4 homes on it or a 4-plex without subdividing, since you met the density requirement.

LaDana said this brought up some good points. The state adopted the Building for Lease or Rent (BLR) regulations where that was the reason for [the BLR] coming in to play. Other counties, like Ravalli County, had people who wanted to rent little cabins or an extra structure or residence to make a little money. Lake County hadn't adopted them yet. They were trying to figure out how [the BLR] worked with the DMR. They'd been trying to figure out how the DMR worked so they could adopt those other regulations which were supposed to be in place. The BLR were sort of a modified subdivision review where you reviewed the impacts. It was less review [than a subdivision]. You weren't creating lots. You reviewed the impacts from what the rental (or whatever the project was) would have. If they could get everything moving along, they could get regulations in place that would take care of that. Another thing came up when you started to talk about multiple dwellings on a lot. When you put 4 houses on a lot, it wasn't really our place to ask how you would sell this in the future. The more stuff someone put on a lot, the more expensive it got. Someone couldn't afford to buy them unless they rented out the other structures. When you said only family members could live there, who regulated that? It became really difficult for the Planning office to regulate.

Steve R thought the people who would be in favor of that would suggest the market would regulate it. In 5 or 10 years, people who put 4 homes on a 20-acre parcel in 5-acre density area might find out they couldn't sell them, and people would stop doing it. Bob felt the situation with the cluster development was similar. In theory, it was a great idea. The market drove that. People didn't want to live right next to their neighbor out there. They wanted to have 10 acres or 20 acres. Janet noted that some people didn't [want the acreage] because they couldn't maintain it. For instance, [the Tribe] took an 80-acre piece and made four 2 ½ acre lots along the county road. The remaining 70 acres were maintained as farmland. It worked beautifully. They had easements along both ends of the 80 for farm access. Bob asked if they were sold. Janet replied they leased them. Some Tribal members owned land and some leased land from the Tribes. When she developed Tribal land, they leased the lots to Tribal members, who could build a stick-built or move a modular on. In some areas they could put a trailer on. Returning to the four 2 ½ acre lots, they were plenty big. They were too big to mow for most people. They had the 70 acres that were protected as agricultural, and open space and wildlife habitat. It worked for multiple uses.

John said you couldn't say that because it was a land use. Janet replied for [the Tribe], it was a land use plan for that 80-acre piece of property. She thought you could take the land use language out of the DMR if necessary. Steve S asked if that would belong in a zoning regulation. The group affirmed. LaDana clarified that the DMR were county-wide zoning. John said they had to take [the DMR] around the County twice because they hadn't presented it as zoning the first time around, and it was. Steve S checked that there were zoning districts within the County that were independent of [the DMR]. LaDana confirmed. What was left fell under the DMR, which was zoning, adopted under the zoning rules of State law. Steve R asked if this was because it had land use in it. LaDana said no, it was because that was the process. You had to adopt it under whatever authority you had, either subdivision or zoning. Janet said it was a simplified zoning, without rules and regulations about setbacks, nuisances and so forth. It just talked about how many units per acre you could put. Steve S summarized that it was minimal zoning. The group agreed.

LaDana said if they wanted some of these other concepts, like the cluster developments and so forth, maybe that stuff should go into the subdivision regulations. John thought those were there. LaDana thought some of it was, but not really. Janet said it affected density. You could go up to double the density if you clustered. It was a bonus. It was nice for people who wanted more lots but you could still protect the farmland. LaDana said they'd run into a requirement to put some sort of covenant on there that couldn't be lifted. A document had to be recorded. Down the road, if someone didn't know about it, they might come in, ask to develop it and that might happen. She gave a recent example. As part of the Peschels Paradise recorded subdivision, they put an agricultural restriction on 60 acres. The landowner had a lot of acreage in the area and restricted 60 acres next door [to the subdivision]. A boundary line adjustment to sell a piece came in recently. It wasn't part of this subdivision. When the survey got recorded, a deed creating the agricultural parcel didn't get recorded so it was never created. When she did an exemption review for the boundary line adjustment, it was a red flag. The new survey being done for the boundary line adjustment would have a piece locked out where it would say you couldn't develop in that area. The lot above would have the same thing on there to protect the 60 acres. She thought that over time, it would get harder and harder to track some of those things. If someone had some idea on how to do that, it would be great. The few she'd seen had already become issues. Staff turned over. Commissioners turned over. Restrictions could get lifted. It wasn't that maybe they shouldn't be doing these. What you had to look at was what kind of process could be done to help maintain exactly what was wanted in the future.

Janet asked if the County attorney could give advice as to how you could keep the restriction in place rather than having it lifted, like the agricultural exemptions. LaDana replied it had to be clear to the next set of staff or Commissioners or whoever. Janet asked if it was a recording issue. LaDana said the Peschels Paradise restriction was on the plat. However, the deed to create the lots wasn't recorded. Janet asked if the recording of the deed needed to be a condition of approval. LaDana said that at [the current] time, they tried to make sure that happened at that point in time. The deed actually created the lot and triggered it to be put in the plat book. Until that happened, there wasn't really a lot there. She saw it getting harder down the road to track. For the Peschels Paradise example, they said it had to show up on the deed and on the survey. If it was on the original survey, it was pretty clear. It wasn't so clear on this new survey. Janet

suggested a perpetual conservation easement. LaDana said conservation easements were great, as long as they actually got implemented with the documents recorded. Robert said that scared a lot of people away. They didn't want the property restricted. Janet said if they did, they could double the density. Robert replied they didn't care; they didn't want it restricted.

Motion made by Rick Cothorn, and seconded by general acclaim, to adjourn. Motion carried, all in favor. Meeting adjourned around 8:55 pm.