

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

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

STAFF PRESENT: LaDana Hintz, Lita Fonda, Wally Congdon

Bob Kormann called the meeting to order at 7:08 pm. Meeting minutes deferred as they were not yet available.

DISCUSSION ITEMS

Wally Congdon began the discussion. People forgot the fact that democracy wasn't a spectator sport. He talked about some history, which included how to get people to show up to participate and on comprehensive plans. Those plans varied from being completely binding to having no binding authority at all. Montana took the middle of the road approach, where this was a non-regulatory document called a growth policy. Although it wasn't mandatory to follow it verbatim, you had to be at least guided by or consistent with or consider the growth policy. It wasn't just about growth. Whatever they as a Planning Board and the County Commissioners chose to do, they could do. It wasn't a regulatory document. It was the statement of policy, goals and objectives. Once that part was done, you got to the implementation step. That was through subdivision regulations, sanitation and health rules, right to farm ordinances and simple things like what you did for your public improvements for roads, streets, sidewalks, drainage systems, stormwater and whatever. How you acknowledged the importance of historic structures, areas, artifacts and so forth fell to you but the growth policy was the driving document that said you had these goals and objectives, and what you really had the ability to do were two things that people forgot. Knowledge was power. He wanted as many facts and as much information as they could give him. He couldn't defend a county or city without facts or data. Federal law required that a federal plan be consistent with the local plan to the extent legally possible. He gave an example where the driver of the federal bus for the amount of timber cut in the Swan Valley for fire protection was the Swan Valley Rural Fire District. He gave an additional example from Beaverhead County and use of wood from slash piles for burning, which required the use of information on the number of impoverished, the aged, the population and so forth, so the [federal] plan [could] then be consistent with the Beaverhead plan. Knowledge was power. You needed it in the document.

A growth policy was supposed to be reviewed and updated every 5 or 10 years. Lake County hadn't done it for years. If you had zoning or subdivision regulations that referenced it, one had to be consistent with the other. You had to at least be driven by, guided by and consistent with the growth policy. Wally described the way to solve the problem with public participation. Every person had something they knew a lot about, be it a hobby, job, former job, interest or concern. Every person had something they knew how to do. They needed people to take their special skills and give a plan. The Beaverhead County plan had 137 names on the back page not counting commissioners, city council members, fire district employees or planners. They were

each from the public and had something that they knew about. The people were divided into groups according to what they knew, and each group wrote a half page for the plan. He gave the examples of groups of floaters/recreation on the river, hunters, snowmobilers, foresters and fishery people in committees of 5 to 7 people. Then [the county] sat down, proofed it, and added and subtracted this and that. You had to sort out part of the equation.

Wally continued to the mission and recipe for the Planning Board tonight. He referred to the index subjects in the example table of contents that was handed out. (See attachments to minutes in the November 2015 meeting file for handout.) Each Board member needed to find and talk to four people where each would want to do something with one of these topics. They needed to bring each name back to the next Planning Board meeting along with the committee in which each person was interested. If each of the four people that each board member found then found three other people in turn and took some public comment, do whatever else to get information on that topic and wrote the half page for what they should have in the growth policy, the work for the first draft was then done by those who needed to write it: John Q. Public. Once you got the first half page on each of those topics in, then you circulated a [inaudible] that started some public hearings on these topics, where a set of topics would be featured at a particular hearing. You came up with a list of recommendations, and revised the language, added more information and took some information out. You ended up with a document that you didn't have staff spend two years writing or that you as a planning board tried to write. The public was really supposed to write this document. [In Beaverhead County], it took 137 people four and a half months to write the first draft. Two planners and two commissioners went through it, taking another 3 weeks. They did four public meetings and got to a final draft. It took Wally about 8 months to proof it to make sure it was legal. Knowledge was power. The document was set up for that. The subdivision standards included things like if you were subdividing ranch property, you had to have an AMP (Agricultural Management Plan) and a WMP (weed management plan) to be reviewed every 3 years by the County Weed District. He described the first parcel sold, which sold for \$3,120,000. If you wanted defensible regulations, you needed to update the growth policy. Knowledge was power and it needed to be there.

Wally mentioned that from people he talked to across the state, the Lake County Planning Board got a standing ovation for their work in writing findings of fact at the last meeting. He then reiterated each of them knew 3 or 4 different people, who each knew something on a subject that really mattered to them. It could be their education, job, hobby or personal belief. They could make that person the chair of that particular subcommittee of the Planning Board and tell them to find 3 or 4 other people to write a section on this, get some input and get a place to start. What you got was public participation in planning, public knowledge and public path.

Wally confirmed for Janet that people could take language directly from the existing growth policy. If they took from the old growth policy, they needed to say why the information was needed. [For instance], saying you wanted to save fish made everyone feel good. What they needed to do was to think about it and tell the reason why, what mattered, what the numbers were and what the data was. Then it was a defensible product. Bad facts made bad law. No facts made worse law. Good facts made good law. That was why writing the findings on a dock in Lake Mary Ronan was the best example he'd seen of a Planning Board doing what they were supposed to be doing in 35 years of doing it and 30 years of teaching. They did it right. You

could copy the existing language, change it, add to it, delete what you didn't like and get the information. Demographics and population had changed completely. What were they doing to take care of what they had? Why was economic development to develop something new? What happened to the preservation? Preserve the potato farms, a lumber mill and turning hay into baled cubes to ship to Japan. Why not preserve what they had in addition to doing the new?

A lot of growth policies lacked a statement of policy of how to preserve what they had. What did they have? They'd never have 4 lumber mills again. He gave other examples. They were making a shift from something to nothing. He talked about arts and skill sets that were given up in the process of that shift. Why didn't the growth policy acknowledge skills sets and their importance? That was all of us, to custom, to culture, to heritage, to history. He quoted Granville Stuart from 1872 in saying that you have no idea where you're going unless you have a really good understanding about where you've been. It was true. He said they should acknowledge history—where they'd like to go and what they wanted to achieve and the broad sense of goals and objectives.

When you got to things like natural resources, they could talk about things like hazard areas and scenic resources. What happened to the broad word about recreation? This was a policy statement and a direction. It was a plan. If you wanted to get grant money for a county or a city to do something, they needed a plan. He gave another example of the objective to provide sustainable economic development and grants for sustainable energy. If you had a county policy in your growth policy that said you wanted to achieve this and listed some ways to do so, you were a lot more prone to get the funding than if you had no policy that made it plain. Montanans had a constitutional right to a clean and healthful environment. If your policy was to achieve that, a lot of doors opened that weren't open to other people.

That was the call of the people who you knew who would work on the document. You might not agree with their definitions. The point was not that you agreed but that you had a plan, and you got the information and objectives. Once you got through the process of public comment, it went to the Commissioners. The best way to get it written in the first basic round was the public, which was who you knew. They had an option to do planning from the bottom up instead of the top down. It didn't mean you had to agree but at least you got the input and could come up with the needed goals and objectives. Anybody could hire a consultant for \$20,000 to write a growth policy. He gave examples of mistakes made by consultants who didn't know the area. The locals knew the area and what happened there and that was who needed to write the policy. The growth policy drove a whole lot of other buses if you approached it with that in mind. Wally suggested that Rick call 42 more neighbors to talk about this.

Wally said that simple things should be in [the growth policy] too. They had the lakeshore protection ordinance that was very good. He spoke with Jim at the Tribes a lot. The issue wasn't the politics of lakefront protection. The issue was the question of what the physics of the lake were. The growth policy recognized natural resources, natural habitat, water flow, streams, and those qualities were the things for which your growth policy let you build a better shoreline protection ordinance, and the same was true for wildlife habitat. He gave the example of showing him a place where the design standards said you were a given distance from the lot line because you wanted a corridor between it for wildlife to move down. If the growth policy had

the facts that said having a corridor was really important, he could help them write a set of subdivision regulations that let you put building envelopes on a lot for where you could and could not build something to accomplish what the growth policy said you were supposed to do. It wasn't just about raw numbers and economic development. [The growth policy] was about all the things you saw about you.

Janet asked about incorporating other plans by reference. Wally replied you could do that but you were better off to incorporate the language specifically since plans changed. He highlighted a problem where a plan was useless if there was no budget for monitoring. Monitoring tended to be the first budget cut. A planner would say that a thing to put into the growth policy was a real commitment policy-wise to monitor and a real commitment to other entities who did stuff [who] had to monitor too. Their success should be in the growth policy as a way 'how to'. Their failure should be in the growth policy as a way 'how to not'. You only figured that out if you monitored. You needed a firm commitment to monitor. It was hard to tell other agencies to monitor if you didn't do it yourself.

Wally reminded they had a few weeks to pick out four names for the next meeting. If they picked an additional four names for the meeting after that, they'd have around 70 names, which could cover all of the topics. Each of those people could meet with a few other friends or people who did that [activity] and come up with a draft, then kick off the public participation process. Some [topics] were things that each of the Planning Board members might or should need to take one on as well. This would lead to a document written from the bottom up, where the rubber met the road. This gave the opportunity to show up and make sure your ox didn't get gored. It worked elsewhere, where they didn't get everything they wanted from the federal government, but they got a whole lot more than they would have if they hadn't done it.

Wally referred to the memo from the Tribes regarding the DMR (Density Map & Regulations), which had been handed out. (See attachments to minutes in the November 2015 meeting file for handout.) The Commissioners had their first public meeting a few weeks ago. He mentioned Resolution 15-30, which had also been handed out. (See attachments to minutes in the November 2015 meeting file for handout.) The resolution said that at this point in time, the Commissioners took the position to proceed to unadopt or repeal or revise the document. He gave the example of another problem, where the Polson Development Code was to encourage growth around the Polson area. Among other things that hadn't happened, there was to be a plan for stormwater drainage and wastewater treatment, and work on getting the money to install a system. There was no wastewater system to deal with them. You couldn't build houses, put in pavement, roofs or sidewalks unless you had something to do with the water. People had great intentions but nobody got it done.

Janet asked about no money and no time. These were rural counties and cities with small budgets. Wally said the carrot in the DMR was that they would do these things to facilitate it working. When they didn't do the stuff they said they'd do to make it work, someone could say it was a taking because they provided no opportunity. The problem was the opportunity to develop didn't occur because they didn't encourage the density to be available or viable where it could have been. Janet said she understood his point that there were certain things in these regulations that were never carried out. Could they say these would be carried out as time and

money permitted? Wally said they should have but nobody did. Janet asked if it was general, how someone could be sued in a rural area with sewer and water districts. Wally thought it wasn't a rural area. He compared it to Beaverhead County, which was larger than 7 states with 9,023 people in the county, and what the towns there accomplished.

A problem here lay partly with Lake County. The subdivision regulations didn't require a waiver of a right to protest a rural special improvement district for sewer, for water or for a school bus stop. They wanted to encourage this really rural [area] to keep agriculture going but they didn't do these things. Agriculture was open space. They supported agriculture but what they didn't support was agricultural opportunity, so they didn't get this. The issue lay in that they said they would provide density by having opportunity by these municipalities. By not following through with a plan or waivers for subdivisions, they didn't provide opportunity. That was why the [resolution] language didn't say they were going to abandon the DMR totally. It said they needed to repeal it for the time being to get the growth policy done, and get the stuff in the growth policy that would let them implement those requirements. He mentioned Dayton, Big Arm, Pablo, Ronan, Mission and Polson and asked why every subdivision around didn't have a requirement on the subdivision plat that every owner of every lot waived the right to protest from water, sewer, streets, stormwater and school buses.

Dave DeGrandpre said that wasn't legal. The law was changed in 2011 and prohibited a blanket waiver of the right to protest for all improvements in subdivisions. Wally replied you could still require a waiver by item. If you wanted to waiver by each one, you got it from the facts and information in the growth policy for why you needed it. They didn't have a growth policy that gave the facts and information to get that. They had the chance with the old DMR to do it, before that requirement went into place. They didn't do it. They didn't provide an opportunity or a revenue source and they should have. The way to unscrew it up was to require [the waivers] based on the information in the growth policy. They needed graywater treatment for septic water, especially around the lakes in the County. If they solved the graywater problem, they were a lot farther along. There were simple things to do, like what you did for a water source for fire protection. He didn't need a blanket waiver. He needed a growth policy that said why they needed these things.

Dave said the subdivision regulations included that already. Wally said the subdivision regulations only included the waiver for roads. Dave said they required a water source for fire protection, for example. Wally said there was no waiver for sewer or for municipal or other water. The problem was there wasn't broad enough language or broad enough information in the growth policy to justify it. He couldn't defend that. If they wanted to do it, give a growth policy that would do it. If they didn't want to do it, that was their choice. If they weren't going to do it, then don't say they had a density map that gave them these incentives and density in these locations when they hadn't gotten the ability to do it. Give him contract sewer from Polson, for Dayton and for Mission. Dave said the County didn't have the ability to do that. Wally replied that the cities did and the County could have gone to the cities and gotten a contract.

Janet noted there were just the 3 incorporated cities and the districts were just volunteer boards. Wally said the districts could do it too, if you had a sewer district instead of an incorporated entity. They could still contract the sewers. Polson could have contracted for sewer outside the

city limit. Janet said they couldn't if they didn't have capacity. Wally said they could have gotten money to build capacity through contract sewer. This was the deal. They had no services, no sewer, they couldn't contract it and so [people] couldn't do it. There was no opportunity to subdivide with the DMR because they hadn't done things to encourage the development opportunity they'd have gotten with water, sewer, roads, streams and stormwater. They had to think it through and come up with a growth policy that gave them the statistics. Then they could defend it. Janet disagreed. She listed growth areas, where you could have higher density if you hooked up to sewer and water. She listed other density areas, where you could have individual septic. There was opportunity. They reduced the density in the vulnerable aquifer areas for that very reason.

Wally said you might then have one house instead of ten houses putting graywater in a system but you still hadn't dealt with the problem of graywater getting into the aquifer. He gave an example from elsewhere, where 61% of the water out of the local wells was graywater from a creek. They finally got the sewer there based on that. What they hadn't done [in Lake County] was to give a mechanism on how to get the sewer. Janet said the County sanitation regulations here required pressure dose systems or systems that would treat the graywater as part of the issue. The sanitation regulations buffered them so the degree to which you needed to develop your system would have been addressed there. Wally said you couldn't defend the zoning if a pressure system treated all of the water. There was no reason to have less density. Janet said you could treat it with one system on 10 acres. At that time they also looked at nitrate levels and how additional development would contribute to existing nitrate levels. If it would exceed a threshold for nitrate then they couldn't develop. They were protecting the water quality. Wally said the better part was to get rid of the nitrate by either bunching it up where you wanted to put it [and] provide the opportunity or to contract the sewer further out. They didn't do it.

Janet said they developed growth area boundaries that were a quarter mile outside of the sewer district boundaries. If somebody wanted to hook up, they were within a quarter mile and could do it if they had the money to pay for the improvements for the extension. They had to do the same thing on the Tribal land in Pablo. Wally said none of the districts had a mechanism with a contract. Dave said it wasn't a requirement. Wally said you didn't do it as a requirement. You had everybody sit down and facilitate the opportunity by saying you wanted [developers] to build within a quarter mile of an existing sewer system [and] provide the opportunity to do so. They didn't. Janet said that they just had to petition to the sewer district to annex in. Wally said if two things happened: did it have a reason to allow it or not, and what did you do for municipal water then? There was no mechanism for contract water services either. The point wasn't whether you could or couldn't. The point was [the County] didn't do what they said they'd do in the document to facilitate this. The idea was great.

Dave said it wasn't the County's job to do that. It was the County's job to set up the opportunities to try to help the water and sewer districts to see if they could expand capacity if they could. The County didn't have control over whether the water and sewer districts actually did this. They were different entities of government. Wally responded the County was not [inaudible] to set up an annex and to set up the chance to do it. They set it up with increased density. No one had contract sewer or water in Lake County so the DMR didn't accomplish what it was supposed to accomplish. It was zoning. It wasn't tied to the growth policy. Dave

said that the growth policy clearly said that this was how they were going to achieve some of its goals. Wally said that they didn't do the [tasks] they were going to do [for the DRM]. That was the problem. There was no sewer, water or contract service. The question was the best way to go forward. His thought the best way forward was to go through the exercise to repeal the DMR for the time being. Don't throw it out but just repeal it for the time being. Get to work on the growth policy and get it done. In the process of doing the growth policy, make sure all the contract sewer potential entities and water entities could do it. Janet referred to annexing. If you couldn't annex, you could have up to 4 units per acre or the highest allowed by law, whichever was greater. Wally said without sewer on public water was 2 units per acre. It was one per acre without municipal water or sewer. That was the problem. You couldn't afford to build roads or punch it together.

Roland asked what contract sewer was. Wally explained if you wanted, for example, to build 10 houses outside a city but you couldn't afford the line or to build the whole plant you could contract to put the graywater into the city's system. You would agree to two things. One would be if [the city] wanted to be paid for the rest of the line that came to you or wanted the money back, it would have an ordinance that said whoever hooked onto the line had to pay you back your share. You contracted to put your graywater into the city's plant but didn't annex into the city. If you laid a mile of pipe, there were two requirements in the city's rules. One was the pipe needed to be big enough to handle everything from the city to you. When someone came to hook on, they had to pay you back the cost for a percentage share of the pipe. That was part of the issue of contract sewer. The same was true with fire hydrants for fire protection. Roland asked how it was determined how many lots there might be. What if it never happened? Wally answered that was why you had a density map and a growth policy. He described an example of contract sewer in Missoula. Janet thought the example had been an issue because it caused the development to jump out and it was harder to provide other services. Wally said they did it for two reasons: they needed the services done, and it put the houses on clay fields instead of on the riparian zone or on the primary agricultural soil.

Janet asked if they'd have to look at the laws of each sewer district in Lake County. Her understanding was you couldn't hook up without being annexed. Wally said that wasn't the law; it was usually the policy of the district or city. You'd have to see what each district had. If they wouldn't let you do it, you would get them to change the rules. Roland asked if they needed a draft or template within the plan in the event they wanted to do a contract for sewer or water. Wally said yes. Roland pointed to the example of the City of Polson. If they barely had capacity now, you were making some assumptions that the only way the example subdivision could go in was if there was this contract for sewer. What if the ability to fulfill that didn't exist in the City of Polson?

Wally said they had the capacity to take the water but not the solids. You contracted the graywater rather than the whole sewerage, and put in a step system. He identified areas by Missoula that did this. It addressed nitrate affects because there was nothing going into the ground. You kept your septic tank. You contracted the graywater and kept the solids. Janet said graywater wasn't septic tank effluent. It was like the kitchen sink. Wally said graywater was septic tank effluent too. Once it came through the tank, it had been treated primarily. When it went towards your drainfield, that was the graywater. You had a pump on every septic tank

there. It went to the septic tank, came out into a tank that pumped it to a main pipe into the city's sewage treatment plant. That was what got treated by the city. There were no solids. This took the cost of the whole system and made it 25% of what it would have been. The pipes weren't as big, it wasn't the same grade, not macerators and not different pumps. That was all of it. It was an achievable goal. The first step system in Lake County was put near Elmo in 1967. It was still there. One pump had been replaced. No infiltration hit the lake. He talked about the problem with infiltration rather than capacity that Plains faced and irrigation. The growth policy said what you wanted to do, why you would like to achieve it, some examples that worked, where you were and what needed to be achieved. Janet mentioned the need for a 200-foot buffer and you could only sell for non-consumptive purposes with such irrigation, including consumption by cattle. Wally said it depended on how treated it was.

Dave outlined the big picture of how planning worked in Montana. You had growth policies, which were comprehensive plans. This was a general non-regulatory plan although the courts found it was to be consistently adhered to. It set the stage for future actions. He thought the process recommended by Wally for rewriting the growth policy sounded like a neat opportunity. In terms of what it meant, your growth policy was your big picture plan that described many things. You had to talk about subdivision review criteria, intergovernmental coordination and strategy for public infrastructure. You had to include conditions, trends and projections on things like natural resources, housing and economic conditions. The Lake County Growth Policy was adopted in 2003 and talked specifically about goals and objectives, which were also required by state law. This included things like protecting wildlife habitat, encouraging effective and cost-effective provision of public services and things like fire protection, police protection and shortening school bus routes. One way to try to achieve those goals and objectives [in Lake County] was the adoption of the Lake County DMR. It was intended to hit several different things: to protect wildlife, to preserve agriculture, to provide opportunities for development and to provide opportunities for expansion of the small urban places (Ronan, St. Ignatius and Polson). It was one of the implementation measure but not the only measure.

Dave pointed to the implementation table in the Lake County Growth Policy. It showed the ways Lake County would try to achieve the goals and objectives of the growth policy. Some were things Lake County could actually do itself. Others things required working with other organizations like the Pablo Sewer and Water District, the Town of St. Ignatius or the Rollins Fire Dept. The way infrastructure and communities developed in Montana, it wasn't a central government that did these things. They didn't have the budget and weren't set up that way. They were set up for these different governmental entities, such as a conservation district or a fire district or a sewer and water district. The county's role was to set out what the goals for the community were and how to try to achieve them, working with these different partners. He was working with Missoula County to rewrite their growth policy and [partnership] was the emphasis. The county set the goals but it had to work with lots of different partners to get there. Lake County didn't have the authority to make the Pablo Sewer and Water District, for example, find sewer and water capacity. It had to try to set the stage and provide incentive by allowing a certain amount of growth [and] a more intensive amount of growth but it couldn't make it happen.

Dave moved on to talk about zoning. The DMR was zoning. Across the US, zoning was the primary tool to regulate land use. It was less common in Montana counties. The DMR was a one-subject zoning district for Lake County except for the areas that were already zoned. It was single-issue rather than comprehensive. Most places would call it overlay zoning. Under Montana law, counties clearly had the ability to adopt zoning as long as certain minimum requirements were met. Zoning was a way to implement the growth policy and to accomplish some of the goals and objectives. It wasn't the only way. There were also subdivision regulations, working with water and sewer districts, setting up road districts and myriad other ways. His point was that they had the ability to maintain the DMR or not. It was one way communities across the country had decided was appropriate to regulate land use and to try to guide growth in some areas and limit growth in others. He thought the bigger question was if they wanted the DMR and if they thought it was appropriate. He thought that was something for the Commissioners to consider. He referred to the email he'd sent earlier. (See attachments to minutes in the November 2015 meeting file for handout.) He thought a lot had changed and he agreed now was an appropriate time to look at the growth policy to see what in there made sense today and what didn't. He didn't know whether the DMR should be thrown out or repealed in the meantime.

Roland thought the DMR had been repealed. Wally explained that a public hearing had been set on Dec. 18 [by the Commissioners] to talk about what they were doing with it. It was state law that they could repeal it without a public hearing. You couldn't amend or adopt it without a public hearing. The Commissioners were doing a public hearing anyway. He noted that Gale was here tonight. Dave continued that the bigger question was what was appropriate and made sense at this time, and what the conditions were across Lake County today and what you were likely to see tomorrow. Maybe it was and maybe it wasn't appropriate to have an overlay zoning district to address the conditions. To him, that was why you looked at the growth policy again and went to the public to try to assess what made sense, where they were today, where they were likely be tomorrow, where they wanted to be tomorrow and how they got there. The DMR might or might not be one of the important tools in order to get where you wanted to be. Without talking to the community members or having them rewrite the plan, he thought it was premature [to repeal the DMR]. Roland read a portion from Resolution 15-30. Did that mean [the DMR] was repealed? Dave said it was a resolution of intent, which was the first step towards it. Gale explained with an example of a resolution of intention to dissolve the City County Planning Board. They had a public hearing and the vote was to not follow through with the resolution of intent. His perception was they put the resolution out there, and then listened to public comment.

Roland asked about the reason for the resolution. Wasn't the DMR just a small piece of this puzzle? It seemed they were spending a lot of time looking at it. Wally said it was a small piece of how you implemented a policy. It was a giant piece of the puzzle. Roland thought they didn't need to do something to the DMR at this point. It was the growth policy they needed to focus on. Wally said the question was in the meantime, defending the DMR was a mess to do. He referred to table 7.1 of the Growth Policy and the things that weren't done in the ensuing years. Dave and Janet disagreed. Dave said they'd done the DMR and subdivision regulations. Wally read through some items and asked if the County had done each item, answering no in many cases. Dave disagreed on some points. He thought this was an argument for updating the

growth policy. Wally said it was also an argument to say you couldn't defend limiting density very well at this point in time.

Roland said his initial thought was [the DMR] was unenforceable. He pointed to the letter from [Tribal Council] Chairman Vernon Finley who said it was fully enforceable based on their research. It sounded like Wally was saying it wasn't. As well intentioned, expensive and well thought out as it was, why were they spending a lot of time on the DMR if it was basically legal fluff? He thought time and resources should be spent on things that were enforceable and getting those ducks in a row before they focused on the DMR, which wasn't enforceable. Janet requested hearing from the Tribe's attorney to speak to why he and another attorney thought it was defensible. Roland said there seemed to be two completely conflicting legal conclusions about what was going on.

Jordan Thompson, the Tribal attorney said there were at least three. He had been introduced at the September meeting. Since that time, he'd gotten up to speed on the growth policy and DMR, and looked over the relevant Montana code. He thought it was legal. He talked it over with the rest of the Tribes' legal staff of 10 attorneys. They were comfortable it was a defensible document. To get an objective opinion, they talked to an outside counsel who just won a Supreme Court case in over a growth policy in Montana. The outside counsel also thought it was legally defensible and his recommendation was also to focus on the growth policy at this point in time. From that, they could update the DMR. Until then, there was no reason to repeal it, which was the Tribes' position as well. Look at the growth policy and see how you might want to change it in the future. It was interesting to hear Wally's take. If someone were to sue, would they sue Lake County or, for instance, the City of Polson? Wally said if it was a density issue outside the city boundary, they would sue the county. He described some subdivision history and repeated that the problem was still that the work wasn't followed through and done. That was why he said they should do a growth policy. A resolution of intention from the Commissioners said they didn't intent to scrap it totally, but to undo it for now, figure out what they were going to do, get a growth policy and go from there. It wasn't just density ordinances. It was the requirement for health rules and what would be done for waivers for water, waivers for sewer, RSID codes and the rest. Bring it on and get it right, and make people do what they ought to be doing to pay for the bill. Why didn't they have a fee as well if somebody did contract sewer or contract water? They could get paid back in the municipal ordinance for the extra money they put into the system. That would get it done. If, for instance, Elmo had capacity, why didn't the rest of the lake for a mile past Elmo contract treatment of the water on that system and pipe it? If they had all waived the requirement of protesting a RSID to it, all of those new little non-Tribal Elmo houses in the subdivision below the café should have and could have hooked on to that system. Nobody implemented a plan to get there. That was the problem.

Janet said there was a reason. Why would the Tribes want a lot of non-Tribal homes hooking up to their system? It then increased the disparity between the numbers of nonmembers versus Tribal members who lived here. The Tribes were trying to catch up, population-wise and be a majority on their own reservation. If you allowed higher densities in areas that were predominantly non-Tribally owned, that defeated the cultural critical issue to the Tribes. Wally didn't recollect something in the growth policy that said catching one batch of people's population up to another was a goal or objective. Janet directed him to the history and culture

chapter, which talked about the importance of wildlife habitat, open spaces and culture, and of the dominant society coming in and trying to change the way the Tribes did things. That influence was very difficult culturally for the Tribal people. Why would they want to promote growth in areas where the Tribes were trying to catch up and be a majority on their own reservation? The Tribes did not agree to have the reservation opened up to non-Indian settlement. It was federally illegal. This was a unique situation. Two thirds of this county were on the reservation. They were supposed to try to look at the cultural issues and natural resource issues and try to work with those concerns and issues. It was difficult to weigh. Cultural resources were probably more important than water quality in some areas. If you didn't allow 40 septic systems in an unincorporated town and you could only have 10, what was wrong with that?

Wally said the problem was the houses were there and the water quality issue was there. Since the houses were approved and built without jurisdiction of the Tribe, having access to the sewer would have solved a bunch of water quality issues. The policy said to preserve the resource or amenity. He highlighted 42 US Code 13-31, which talked about the importance of custom, culture, heritage and history. What they needed was a discussion of the resource issues and how you regulated density. The density question wasn't about who was a majority or minority. It was supposed to be set up to encourage infrastructure growth where you had infrastructure for density in those places. What they didn't do was encourage the infrastructure to be there since nobody followed through with the two pages of stuff they were supposed to do. Had they done it, they probably would have had the density next to municipal or other systems.

Janet explained others could hook on in Elmo if they were part of the master plan for Elmo. When the sewer expansion was planned, they had community meetings with Tribal and non-Tribal people and asked where they wanted new hookups. They planned the new system based on the location of those new hookups. There was a master plan in place. Wally said they had a density number of hookups then. He asked if the County planners and sanitarians participated in the discussion. Janet said it was with the public who lived in the Elmo community. The Tribes paid for and owned the system. The Tribes allowed non-Tribal people to hook up if they were part of that master planning process. Wally said the question was the resource. They didn't facilitate with the places that had systems and it hadn't happened. Perhaps Elmo did a system and a discussion about the boundary line of the system. They were supposed to do that with the other [areas] and didn't do it. Janet said the [DMR] document was based on the sewer district boundaries. They went a quarter mile out from the sewer district boundaries. Wally mentioned the municipalities. To him, the point was to do the growth policy. The Commissioners' discussion was to try to get them to a defensible product.

Roland said the DMR had cultural, social and environmental portions. It sounded like the engineering part was missing and not fully addressed. Dave said the way sewer and water was provided in Montana, it was dispersed. The County didn't provide those things. The cities did and there were different water and sewer districts. The County couldn't make these things happen. The growth policy set the stage. The DMR was one of several implementation measures. The growth policy said the County was going to do a bunch of things. The County had done some of those things effectively and had not done some of those things effectively. The growth policy had a lot of different components. Roland realized that. He'd written grants

for water and sewer districts and realized it wasn't a County function per se but they ultimately bore the brunt of the ramifications of the municipality not being able to obtain grants to put a sewer system in. He didn't think the fundability of grants was assessed in that. He thought that was a big piece missing. Wally agreed. Roland said that next, after receiving a grant, someone had to make that come about. Wally said Roland understood. The problem was they didn't have the time or resources or simply didn't get it done. The DMR was zoning and had to be consistent with and driven by the growth policy. When the growth policy said they were going to do stuff and they didn't do it, the DMR was no longer defendably consistent with that policy. Roland thought this was a chicken and egg thing. Wally said to do the growth policy and get it right. Roland added to then worry about the egg, which was the DMR. Wally thought that was where to go with it.

John returned to the four people each Board member was to find. What exactly would these people be doing? Wally referred to a two-page list of topics from the current growth policy. One of these things would be the special interest or what the person knew a lot about. He suggested John and Gale could do the section on education, for example. What each of the people needed to do was to talk to two or three other people who had a similar interest and write a section of the growth policy that was half a page long to say where [the County] was, what they thought was important for the County, and where they wanted to go. Roland asked where a copy of the Beaverhead one was. Wally said the new one, which wasn't as good as the old one, was online. The existing Lake County Growth Policy was online. Those two indexes had been handed out. (See attachments to minutes in the November 2015 meeting file for handout.) He suggested reading the existing policy but the compelling thing was times had changed in the last 10 years. Information and data were different. Each person had a special interest or hobby and an idea that mattered. They'd write a half page, which might not be enough.

Roland thought they needed to focus on this for starters rather than the ins and outs of the DMR, hooking up sewers and so forth. What mattered today was getting started. Wally said the other would come. If they had a good growth policy that said why they needed to do it, it was a lot easier then to do it.

Wally said the last note of the night was a policy step. Montana was the only state that mentioned agriculture in their constitution. A law in the state statutes about protection of agriculture was called a Right to Farm ordinance. It was a policy [inaudible] for a county to make that said they supported agriculture. The basic statement was agriculture was not a nuisance. It also defined agriculture as the practice, the process, the procedure, the science and the art of raising food, fiber or other material for use by people [and] by society. A Right to Farm ordinance gave you a good base statement for your growth policy issue in growing agriculture. The agriculturalists in the counties wanted it. He gave examples of silviculture (trees), apiaries (bees) and aviculture (birds). Right to Farm gave a chance to define what agriculture was and to say it was important and not a nuisance. Right to Farm talked about dust blowing off fields, not overspraying, not spraying DDT on your neighbor's property, not having your GMO plants go on your neighbor's ground. It wasn't a one-way street. It set a standard for agriculturalists and it set a standard for the public that was around it. It was a requirement to publicly educate. Contemplate hard the question if they wanted to support telling the Commissioners to make a policy cut and take a hard look into a Right to Farm [ordinance].

Agriculture was important to this county. It was a huge industry here, especially potatoes, cows and hay. People were doing fruit trees more and more, like the cherries around the lake. Right to Farm was one of the few places you could do a separate ordinance that was a policy statement that drove a lot of the bus with policies set up in the growth policy. Support the orchards on the lake and non-GMO stuff if that was what you wanted. He mentioned a knapweed spray that the neighbor might use that would screw up a potato field. He mentioned organic fields ruined by a neighbor's overspraying.

Roland asked for an example from other states that would illustrate the advantage of having the Right to Farm. Wally listed messes like GMO crops crossing lines and overspray. Montana was the only state with certified natural and certified grass-fed. It was one of the few states that had a really achievable organic standard. It allowed agri-counterculture [inaudible] to exist and made people who were not doing agri-counterculture respect agri-counterculture. The big thing was taxes. A commercial facility paid at a 32% tax rate. Agriculture paid a 2% tax rate. Right to Farm ordinances said agriculture included not just the activity but the ancillary support systems on the farm. Roland asked who would oppose that. Wally replied the revenue part of the question tended to be opposed by people who didn't want to have agriculture in the neighborhood. He mentioned problems in the Midwest related to feedlots and ethanol by-product disposal. The Right to Farm law and ordinances in Montana specified existing agricultural operations by definition (no new) so were careful to avoid those problems. Janet asked who decided the Right to Farm law was more important than protection of the wildlife habitat. She liked the idea of developing a Right to Farm ordinance. Who would enforce it?

Wally said Right to Farm was a policy statement rather than an enforced regulation. It said agriculture was not a nuisance and so forth. The enforcers were the people in the field who said it's an open range state and at the same time it's not an overspray county. It was between the people in the public. The County planning office or the agricultural police didn't enforce it. It was a statement of policy. Things like baling hay in the middle of the night, noise from tractors and dust in the spring if it's dry were not nuisances; they were the nature of agriculture. Another ancillary thing for agriculture now was called agri-tourism. That was ancillary to the farming operation. Right to Farm said those kinds of things. He mentioned [Right to Farm] because it was a base policy statement for a growth policy. If you wanted to have a justifiable density map, you put the Right to Farm ordinance in place. Part of the growth policy said part of facilitating new, more modern agriculture was a trip back to smaller tracts of land. Part of the issue with density, etcetera on agricultural land attempted to facilitate that. Wildlife habitat didn't take a second [place] if you took a hard look at Fish, Wildlife and Parks (FWP) edition called 'Landscapes'. It was the first acknowledgement by FWP that agriculture and wildlife went hand in hand. He gave an example with elk and cows.

Bob K asked about a situation with a subdivision that required weed management next to an agricultural tract. Wally said the County required a WMP (weed management plan) for the subdivision that had to accommodate the fact that you couldn't have overspray, and it had to be done correctly with the right stuff. The plan had to be approved by the County weed board every three years. If there was groundwater or surface sheet flow, that needed to be accommodated in the weed plan too. The County Weed District people were the ones who knew

how to do the weed plan. The State would help write the standards. You needed to have a WMP requirement in subdivision.

Wally repeated that Right to Farm was a policy statement that drove part of the growth policy, to support agriculture where you could. And houses as well—you did siting plans for wildlife too. If you had a wildlife corridor that used 10 acres of a 40-acre parcel, you built your buildings away from that. You put the building envelope on the subdivision plat so it wasn't down there. You still owned the land but the wildlife got free run of where it went and how it did it. You could build it into the regulations if you acknowledged agriculture was important. It potentially drove your subdivision regulations and a lot of your growth policy statement that did that. It could also drive your zoning.

Janet asked about the wildlife biologist argument that when you had more homes with pets, you affected ground-nesting birds and other wildlife species because the pets got into their habitat. That was another argument for density. Wally said to put the requirement in the subdivision plat for no free-roaming pets and include in the covenants that this could only be changed with Commissioner consent. Covenants should not be amendable unless the County Commissioners consented to the amendment. Janet noted the County didn't enforce covenants here. Wally said if you specified in the subdivision rules and the growth policy, you could and should. Roland thought it was an issue of resources. LaDana said [the County] might not enforce [covenants] but [they had the] line that you couldn't amend without Commissioner approval. Janet asked how it was good if it wasn't enforced. LaDana said that was what the perpetual conditions had been. They used that as one of their tools. Wally gave the examples of lighting, which was also a big deal for wildlife, and reflective glass. There were lots of things you could do but you needed a statement in the growth policy that said how important those things were for wildlife. When you had that language in there, you suddenly had a reason to change the zoning and subdivision rules, and it was defensible. You got a great design review/ design mechanism.

Janet asked if the plans that had been adopted for wildlife management around the Ninepipe Reservoir, the Mission Mountains, the buffer zone and along the Flathead River and Jocko River corridors and the background planning work that was referenced in the growth policy wasn't good enough. Wally asked if [the growth policy] included all of that language. Janet said it included a lot of it. Wally said if it included all of it, it was good enough. Janet said she would look at it to make sure it included everything. When she reviewed this before, there were quite a few references, of which she read portions. These included information about a grizzly bear management plan with zones and seasonal recreation closures. Parts of the 1 per 40 density areas were based on that grizzly bear management plan in those zones. A lot of what Wally was telling them to do had been done. Wally agreed but the problem was there was a GMZ (grizzly management zone) for the Swan, which was not BIA's and not the Tribes. It ought to be referenced too and it wasn't. They could copy what they had, added what they needed to have, and make it work. That was it. It was doable. The Board shouldn't be intimidated. He was really impressed by the Board last month when the Board wrote their findings. This was no harder. There were a whole bunch of people out there with some expertise who could help them a ton. Get them to do it—that was who should do it.

LaDana said the other part was the monitoring. Plans were done in 1981. Had the plans been monitored since then? Was there new data to be incorporated? They needed to put that in there to back up why they were saying this. Janet said the Tribes had the data. Did they want all of the Tribes' data incorporated into their growth policy? Wally said they needed enough to justify or reference to where the data was. The more you had, the more defensible it was. The more defensible it was, the more he could use the tool. If he was supposed to defend the product for the Commissioners, the Planning Board and the citizens, then give him a good product. That was what they needed.

Steve R asked if they were at risk for high density development in areas that they didn't want it if they rescinded the DMR. Wally didn't think so. They had no infrastructure that would lead to high density at this point. The very fact that they didn't do what they said they'd do had kept a lot of that from happening. They didn't have the mechanism to get the density people wanted. Condos and all that would not happen at this point. Roland said the economy wouldn't support that kind of growth right now anyway. Janet commented that in the wildlife movement corridors, even 4 additional homes could create a devastating impact. That was the issue. Wally said it might be the issue but it wasn't in the growth policy to say it was an issue. That was for what he couldn't defend it.

Jordan said he appreciated coming to these meetings. Everyone took the time to listen. In the last two months, he'd been learning about the history of the growth policy and the DMR. It impressed him how much energy and time went into this the first time around and how much people were still invested in it. The Tribes really felt it was a partnership with the County. The Tribes did follow the DRM. He thought that tied the Tribes and the County together as partners. The Tribes were obviously concerned if the DMR went away, the wildlife or habitat or other natural resources would be at risk but also given the partnership they felt they formed with the County, to unilaterally take it away hurt the people that spent so much time and energy on it the first time around.

Bob S asked why they needed to repeal the DMR instead of just revising it. Wally replied that if they revised it, they had to amend it. It had to be consistent with the growth policy by state law. The problem they had was they didn't have enough in the growth policy to back it up at this point in time. The dilemma they had was if they amended it, he didn't think they could defend it. Bob S said that what he was saying had been true for a decade. Why did it have to be repealed to be revised? Wally clarified he didn't have a document that let them revise it. They needed a growth policy that was updated and done. Steve checked that an alternative was to leave the DMR in place, work on the growth plan update and then revise the DMR. Wally agreed that was an alternative. Bob S thought 'repeal' sounded permanent. It would also wake up some developers. The Commissioners might not want to have a density map when [the Planning Board] was done because they'd repealed it. He didn't know enough about the history or process to know if he should be concerned. Gale said that things changed since the DMR was adopted. He referred to activity with land sales and subdivision activity then that had since died. There wasn't much going on now and there was a backlog of lots and subdivision that had already been created and were awaiting purchasers. The fear or anxiety that someone would swoop in and do a lot of subdivision if the DMR went away didn't seem like it wasn't going to happen because of the backlog of lots waiting to be sold. Nobody would come in and put in a 20 or 30-lot

subdivision and spend all that money because there was no market for it. There wouldn't be a market for it for several years. Steve R asked why it needed to be repealed if there was no development pressure. It seemed like the reason to repeal would be because somebody wanted to do something that they weren't allowed to do with it in place. Gale didn't see it from that perspective. He was still listening to what people had to say about it. If it was undefendable, he thought that was a reason to repeal.

Roland thought he meant something more like putting it on 'pause'. Bob S checked that [Gale and Wally were saying] if they got sued, they'd have a tough time in court and if they repealed it, they wouldn't get sued. Wally said you could still regulate a lot of what people did without the zoning portion of it. If you treated it as zoning and you lost it, then at that point in time, you were shut down in terms of a whole lot of what you could do based on that ordinance, so it was a mess. The problem was that they had a document that they didn't follow through on. The factual basis to do it in the first place was actually good. They had a lot of ideas and did it well. Looking back ten years, they didn't actually do what they said they'd do to encourage this density. It was delightful to hear that the Tribe had followed the density map with their Tribal housing projects and so forth. Wally said what would help him a lot was to get a map that showed him that: every Tribal housing project in the last ten years and they all complied with the density map. If that was the case, it helped a lot in terms of horsepower to say that everybody was playing by the same rules and everybody was playing the same game. That would be great. If they were going to have a reason to keep things then show him who was doing what.

Janet said in [the letter from the Tribes], they stated the only lands that the Tribes had not controlled that were in trust were the individually owned trusts. Those were less than 3% of the reservation-owned land ownership. They had to go through the Secretary of Interior and pass an ordinance and go through a huge process [for those] and it was less than 3% of the land ownership on the reservation. That was probably less than 1 ½ % of the land ownership in Lake County. In the DMR, family transfers were allowed to exceed the density recommendations so family members could still get a piece of their parents' property as long as they met sanitation requirements. The same thing was true for individually owned trusts. That was where the one subdivision to which Mike Hutchins repeatedly referred had happened. She had done everything else that the Tribes had developed. She would not jeopardize the work that they put into the DMR. They followed it to the letter. Their densities were lower than what was prescribed in most cases. They were hooking up to Pablo Sewer & Water even though it cost them a lot of money. It caused a delay and a hardship. They did it because they cared that much about protecting water quality and wildlife habitat. They were asking that the non-Tribal people respect the same values because they were in a unique place. It was the last remaining homeland of three unique tribes. They were asking to not repeal the regulations because it was helping to protect these critical [inaudible]. It was about protection.

Gale said there were two sides. The Commissioners wanted to preserve the good relationship that they had with the Tribe. They also had an obligation to take care of the non-Tribal people they represented. They'd taken a lot of heat over the loss of the tax revenue of Kerr Dam and for not taking a more proactive or confrontational stand with the Tribe about it. They didn't want to do that and chose not to do that. There were things they chose to do that from the Tribal

perspective didn't make sense or that the Tribe might not prefer. The Commissioners had to look at the non-Tribal population in the County too, and their wants and desires. Janet asked about what would happen if the non-Tribal people wanted the DMR. Gale said there were a lot who wanted it but there were a significant number that didn't want it. Janet knew of several letters submitted in favor of the DMR. She mentioned Dale Becker. LaDana asked when [these were submitted]. They got very few letters in the last year and a half. Dale did submit a letter. Steve asked if the letter was pro or con. Dave said [the DMR] hadn't been on the table as an issue. Janet said it hadn't been advertised. LaDana said it was in the paper. Gale wrote articles on it.

Roland observed what was happening also happened at the last meeting. They were here to discuss the Growth Policy and DMR. They were getting into Tribal, non-Tribal, social, cultural and relational issues, which were complex and time-consuming. He didn't think this was the forum for those.

Bob S returned to his question [about repealing the DMR]. If they were to get sued by someone and Wally was to defend the DMR and lost the argument, what would the result be? Would they say the DMR didn't exist anymore? That was what they did anyway if they repealed it, so he didn't get it. Wally gave two results. One was that they would lose and they would say the growth policy wasn't sufficient and [inaudible]. The other was the other 15 guys who read about it in the New York Times or in Washington DC or in Chicago would come to the reservation, buy 160 acres of ground and split it up as fast as they could. He pointed to other communities in Montana where this happened. The working problem was why put yourself on the front page when you didn't need to. Just get the growth policy stuff done. Repeal [might be] what you did in the meantime but read the resolution of intent. It didn't say they were permanently getting rid of it. It said repeal for now, redesign it, restructure, correct it, etcetera. That was where it needed to go. That was partly based on Janet's comments at the last Planning Board meeting when she said it would be a good thing to keep long term and she wasn't sure if they could get it back or not. If the public said they couldn't get it back, they might not. If enough of the public said you would get it back, change it, correct it and make it consistent, you were fine. Janet said she didn't say that. She said to make the changes. She never said to repeal it. Wally thought she said if it was repealed, they were afraid they wouldn't get it back. Janet agreed.

Wally thought the thing they could do best to get the whole process moving was to make a decision as a Planning Board to say that they would each bring four names to the next Planning Board meeting and come up with four different people and four different topics [from each Board member] and get on with it. That would be his preference. Then have the Commissioners bless doing that, bring it on and get it rewritten. They could see if they could do it in six months. Gather the information and data, put it together and away they'd go. That was the best tool for everything: subdivision regulations, right to farm was a great way to proceed for a statement on agriculture and it was a great way to work with the zoning stuff, the relationships with the towns and districts for extending services like sewer, water and whatever else. Roland asked if that was a motion on which they could vote. He would second that one easily. Rick said the concept wasn't as overwhelming as it was two months ago, with delegation to the neighbors. Wally suggested if you wanted to impress people, not to limit yourself to four. Each could bring 5

names to the next meeting, each with a topic to work on in which they had expressed interest in. Each Board member [could] pick out the one they want to work on.

Dave agreed with Wally on updating the growth policy. He volunteered to help with whatever section they thought might be appropriate. He would be happy to volunteer his time for that. With regard to the DMR, there was no urgency. He thought the scenario where if developers learned it wasn't enforceable, they would flock to the area to develop, was the scenario you would have if you didn't have the DMR to begin with. It was a circular argument. It had been in effect for twelve years and nothing had happened. It had been enforced and administered and it worked. If indeed there was a lawsuit over it, it would be three years or longer with the courts. In that time, the growth policy and rules would be updated anyway. He thought it was smart to do the growth policy and would like to help. Gale mentioned he would bring 5 people too.

OTHER BUSINESS

None.

Motion made by Rick Cothorn, and seconded by Roland Godan, to adjourn and to come back with names next month. Motion carried, all in favor. Meeting adjourned at 9:40 pm.