

LAKE COUNTY PLANNING BOARD
April 13, 2016
Lake County Courthouse, Large Conference Room (Rm 316)
Meeting Minutes

MEMBERS PRESENT: Steve Rosso, Steve Shapero, John Fleming, Sigurd Jensen, Janet Camel, Eileen Neill, Jerry Parson

STAFF PRESENT: LaDana Hintz, Lita Fonda, Wally Congdon

Steve Rosso called the meeting to order at 7:05pm.

For the March 2016 minutes, Steve R added 'as' on pg. 2 in the seventh line of the third paragraph so the phrase read, 'such as in Big Arm.

Motion by Janet Camel, and seconded by Sigurd Jensen, to approve the March 9, 2016 meeting minutes as amended. Motion carried, six in favor (Steve Rosso, Steve Shapero, Sigurd Jensen, Janet Camel, Eileen Neill, Jerry Parson) and 1 abstention (John Fleming).

DISCUSSION: BYLAWS & POTENTIAL AMENDMENTS (7:06 pm)

(See attachments to the minutes in the April 2016 meeting file for current bylaws.) Steve R mentioned that several sections of the bylaws came out of the MCA statutes. In some places, these were listed verbatim and in other places they weren't. Wally gave 'shall' as the parts that guided them. If a rule said 'may' or 'can', it was optional. If it said 'shall', you had to do those. Wally's second point was that some of this was subject to a little bit of interpretation. If the entire Board was computer literate and the law required giving the Board written notice, it might be reasonable that the notice they got was electronic, if the Board thought that was reasonable. He illustrated another reason with examples where the postal mail took longer (4 to 5 days). A mailed written notice would not be a practical, meaningful thing to do for 48-hour notice for a meeting. This also meant that it took too long for the planner to get it on the agenda and to get the data and information out to the Board. You needed to meet the 'shalls' in the law and meet the letter of the law in terms of doing it, and you would be fine.

Wally said a good rule to follow with questions like that was to take the 'tummy test'. If your stomach told you it wasn't the right way to do this, it usually wasn't, so then just correct yourself. If an appeals board looked at it later, their stomachs would go off like yours did and you'd be in trouble. He was pleased that Board members had read the bylaws and realized there were things to take care of. If you had integrity in the process, you had integrity in the product. The bylaws gave you the fine-tuning of the process for a much better product.

Steve R turned to #1 in the bylaws. No comments were offered. In #2, part was word-for-word [from statutes] and some drifted away from that. In the last sentence of the main paragraph, he thought the last part of the sentence should be revised so it read, "...*creation and adoption of the county growth policy, other land use policies and zoning districts.*" (Editor's note: the added portion is underlined here in the minutes.) He gave the example of the work done by the Board on the Right to Farm policy.

In 2.a.3, Steve R pointed out that list was in the statutes. Was there a definition for improvement location permits of 2.a.3? LaDana also wondered. Wally thought the intention was building envelopes, setback distances in zoning and those types of thing. He thought [the writers of that phrase] missed the purpose. You had an improvement location defined, like the setbacks in the lakeshore ordinance or in the zoning, or building envelopes, but they weren't called what the bylaws called them. John thought the word 'improvement' meant a change. LaDana thought this was exactly from state law. John agreed that was probably how they talked about it. An improvement would be a subdivision, for instance. It was saying if you were going to issue an improvement location permit, it just said where it was. It made more sense when you thought about it that way, but there might be a better word for it. Wally said it didn't hurt, but it certainly wasn't clear.

Wally remarked the list was fine. It was statutory. He didn't like making an "all-inclusive" list. Then if you had a really interesting idea or a really unique circumstance, having the latitude to do those things got really difficult. Based on the relative experience of the Board members, it might be appropriate to do [unclear] because it fit that extra checklist the Commissioners got, of saying whatever things were deemed relevant to work with the growth policy statute. That was the statute most notable for the things that went in the growth policy and those things that the Commissioners were appropriate to have. They could keep the list from the statute if they liked. He recommended adding the growth policy to the end of it.

The Board discussed possible wording. Janet asked about environment. Wally said that was on the list for the growth policy and should be there. Janet suggested putting it in the first sentence of #2. Wally gave an example from this week's Missoulian involving US Code 43-31 with the Missoula Mercantile building. They hadn't included the list of custom, culture, heritage and history (from the preface of the national environmental policy act) in their empowering legislation. The Board shouldn't be shy about including the list or broadening it. They were capable of using their toolbox and getting it done. He just didn't want to see the list restrict them to only doing the things they listed. Steve R thought environment, custom culture, heritage and history should all go where Janet suggested in the first sentence. ("*...convenience, environment, customs, culture, history, heritage or order, or....*")

John asked Steve R what his revised 2.a.5 would be. Steve R, John and Wally put 2.a.5 together as: or other policies as needed by the Growth Policy or as requested by the Lake County Board of County Commissioners. Wally again cautioned to watch out for being restricted unreasonably to only what the list had, which could limit them from doing creative, innovative good things. The Board shouldn't let the bylaws stifle them.

Steve R summarized the changes discussed so far, and suggested making 2.a.5 lakeshore protection, with the 2.a.5 previously discussed becoming 2.a.6.

For #3, Steve R suggested changing *electing the election of officers from a period of two (2) years to one (one) year*, which would also match with the statute. Janet suggested adding the clause about this happening at the first regular meeting of each year, like what was said in the MCA 76-1-302. Janet and Steve R suggested the first part of #3 *should read: At its first regular*

meeting in each year, the Board shall elect from its members a president and vice-president. The last sentence would remain as currently written. (The middle sentence currently in #3 would be eliminated.)

For #4, the Board discussed what a quorum was. Steve R said if the Board had seven members and three openings, they could get along with 4 people as a quorum with this current wording. (A majority of members shall constitute a quorum.)

For #5 Meetings, Steve R noted the minimum board meetings in January, April July and October but that was a 'shall' in the statutes. Regarding special meetings, he suggested adding a sentence at the end of 5.a about electronic notice. LaDana advised saying 'can' suffice since there had been board members in the past who didn't have computers. The department made sure they got the notices either by mail or some other method. Janet asked if this needed to be added. LaDana thought it would be good to add since somebody might challenge it. So to *add to the end of 5.a: "Electronic notice can suffice as written notice."*

John asked what it meant by "...or if all members are present at the special meeting." Steve R replied if 100% of the board members were here and they decided to continue meeting or have a special meeting after this meeting, they didn't need to go through the written notice. John thought it should be worded more clearly. Steve R thought it meant if everyone attended the special meeting, notice must have been sufficient. Since everybody made it, did that mean no one would complain about not being noticed? It was word-for-word taken from the statute. Wally reiterated that was for special meetings. Janet thought more than 2 days' notice would be better. Two days was too short. Steve R replied it was two days in the statute, with a 'shall'. Wally suggested if they wanted it to be more, they could put in the bylaws that if possible and not too urgent that 4 days would be fine. Janet was thinking of 7 days. Wally thought that was probably too many for a lot of people who needed a special meeting. Janet asked what circumstance would require them to get together in two days. John noted they were an advisory board. Wally reminded that their public meeting required to be at least posted 48-hour notice by state law. The Commissioners had to have the same. The problem was with a 72-hour notice by the Commissioners, you'd burn a whole bunch of people's time. They could say a preference of 4 or 5 days where possible. It was possible most of the time. It wasn't ruled out if one did need to. For the wording, Steve R suggested for 5.a: *"...at least 2 days in advance of a special meeting, or 5 days if possible, a written notice...."*

Jerry noted that something more than 2 days was at least 2 days so it would work. Steve R gave the example of tonight's April meeting. He met with the Commissioners, LaDana and Wally after the Board received notice there would be no April meeting. The notice was less than 28 days, but they agreed the Board could have a meeting after all, as a special meeting. He asked about the timeframe and running notice in the Leader. LaDana explained that wasn't right either. It was whatever paper they had a contract with, which was currently the Valley Journal. Steve R returned to saying this meeting was okay, because it qualified under the special meeting provision.

LaDana mentioned the minutes now had to also be on file at the Clerk & Recorder. This was added to 5.d: *"...and the Lake County Clerk & Recorder Office."*

Steve R moved on to #6 Request for Board Action. The only change suggested was for 6.c, where “the Lake County Leader” was replaced with “a local newspaper of general circulation”, per LaDana and Janet’s suggestions.

In #7 Order of Business, Steve R identified some changes. In 7.f, public testimony could no longer be limited to 3 minutes. LaDana clarified for board members that state law no longer allowed it to be limited. John asked about this. Wally further clarified with an example where 137 people on one side of an issue who signed up to speak each got 3 minutes at a zoning hearing and the lawyer representing the 7 owners on the other side of the issue also only got 3 minutes. It wasn’t that you couldn’t set a reasonable time limit but at some point in time you had to account for the fact if you had 1 proponent and 10 opponents you had to have a balance. It was impossible for the proponent to respond to 10 opponents at the same time. You had to balance each side of the equation. You could say ‘reasonable’, with an effort to allow adequate time for proponents and opponents to both present their issues.

Steve R suggested changing this to, “Public testimony, at the discretion of the President, the public can be encouraged to be brief.” For 7.g, Steve R confirmed with Wally that they could do that. Wally suggested adding the note that, “The President shall make an effort to provide adequate opportunities for both sides of an issue.” Steve R and Janet *revised 7.f to read: “[Public testimony,] At the discretion of the President, the public can be encouraged to be brief, with adequate time for both sides to present their comments.”*

Wally referred to the due process article on the elements of fair play that he’d given the board previously. It talked about the Fasano doctrine. What they just put in the bylaws was the answer to the Fasano doctrine, which was not only must a process be fair, it must appear to be fair. This was called the appearance of fairness rule. What the sentence [added to the bylaws] did was the Board made a commitment not to just be fair but to certainly appear fair on its face. This was the best preemptive work as a planning board that they could do.

Steve R touched on 7.b Staff Report and 7.c Written Testimony. He noted they needed to make a point to bring up those written comments if such existed. LaDana said they were usually in the staff report and attachments and staff tried to point those out. Steve R said with 7.d applicant presentation, the usual practice had been to give the Board an opportunity to question staff first, rather than questioning both staff and applicant after the applicant presented. He asked if the board wanted to change the written procedure or the practice. John opted for keeping the practice. Jerry referred to a recent dock application where they engaged in dialog to clarify terms and so forth while the presentation was in progress. The questioning went along with the report or the presentation. He questioned if 7.e was necessary. LaDana outlined what usually happened where the staff gave their presentation and the Board asked questions of the staff. Then the applicant or consultant would give their presentation and the Board would ask them questions. She thought John was right that they needed that opportunity. Otherwise they might get lost in that they’d already moved on from the staff report and it was easy to forget questions.

For 7.b, Steve R suggested that it read: “Staff presentation of report and written testimony.” Janet reminded about the written testimony that came in after the staff report. Steve R said that

was laid out in front of them. The staff presented that along with their report. LaDana checked if the current 7.c would go away. Janet said it changed to *“Questions by Board of staff.”*

Jerry asked why 7.h Questions wasn't redundant. Steve R didn't know that it was needed but it didn't hurt. 7.g gave the applicant or staff a chance to address the public comments. The Board might come up with more questions for the applicant or staff after they said something else.

Janet suggested adding “at any time” to 7.j. LaDana checked with Wally that the Board could expel someone from a meeting. Steve R read the revision to 7.j as, *“The Board reserves the right at any time to expel from the meeting any person or persons deemed to be disruptive to orderly conduct of business”* and Wally appended to that, *“or for other good cause.”*

John asked if 7.g might need a revision for the appearance of fairness, since there was a limit of 3 minutes mentioned. LaDana pointed out this said ‘may’, at the discretion of the Chair. Janet and Steve R suggested changing “Chair” in 7.g to *“President”* to be consistent with the rest of the document.

The Board moved on to #8. Steve R mentioned 76-1-211, which mentioned the inclusion of a member of the governing board of a Conservation District, or an associate member of a Conservation District as designated by the governing board of a Conservation District or a member of a state cooperative grazing district if officers of either the districts or the designated associate member reside in the County. This Board met the rules but they needed to add it to the bylaws. LaDana asked if he wanted to *include 76-1-211.1*. Wally clarified there were no grazing districts in Lake County. Those were primarily an eastern Montana deal. He described them further. Steve R shortened the addition to mention that *at least one member must be a member of the governing board of a conservation district or an associate member*. A few things could be left out from the section, but they wanted to *get the gist*. Janet pointed to 8.c for including this, after the second sentence, with *something along the lines of: Of those nine, one member shall be a member of a Conservation District.*

Steve R referred to 76-1-212, which mentioned that board members shall be resident freeholders in the area over which the Planning Board has jurisdiction. Wally commented that was state law. Steve R asked who the citizen members were. Was this the Conservation District member? Wally answered no. Steve R asked if the rest were citizen members. Someone said the Tribal member was not. Steve R read 76-1-212 on request. The Tribal member wasn't mentioned. Wally identified that as a Lake County option. The Conservation District and Tribal members had to be residents of the County because that was the jurisdiction by state law of the Planning Board. Steve R checked that in this County, their jurisdiction didn't include Tribal Trust lands. Wally said it didn't but it did. It depended on a whole bunch of other questions. You could plan for them but it didn't mean they had to follow them. Janet said that federal law said they were totally exempt from state entity. Wally said you could still plan for it; he wasn't saying you could make them do it.

Jerry asked for a definition of corporate municipality. Wally listed some examples, such as Polson and Ronan. LaDana added Polson, Ronan and St. Ignatius had their own planning

boards. Discussion went on, including mentioned of municipalities that were not corporate, such as Dillon, which were formed by the original legislature of the State of Montana.

LaDana asked if they needed to say something about *the other 8 members being resident freeholders since that was what state law said. Wally recommended citing the statute (76-1-212)* and gave some history on the requirement. He thought it was better to say per state law, since he suspected the state would probably get rid of that in one of the next few sessions. *If they referenced the statute, they'd be okay when the law changed.*

In 8.d, Janet suggested removing a comma so that portion would read, "shall be for a term" rather than "shall be, for a term".

Steve R asked what would happen with the changes the Board made. Wally thought the better way to do this was to send the draft to the Commissioners for their comments and then have a joint hearing between the Planning Board and the Commissioners at the next meeting for the public comment and decide if they were doing it or not. It saved a bunch of time and effort. It was simple. John observed it was simpler for constituents, who wouldn't have to go to two meetings.

LaDana asked if the Commissioners were coming to the Planning Board meeting or visa versa. Wally said the Planning Board would have the public meeting but it would be appropriate to ask the Commissioners to attend. That would qualify for them as taking public comment. Also the Planning Board advised them. They could have a combined meeting to take public comment on the revisions to the bylaws of the Planning Board and at the end of that, they could discuss the comments heard and if there were changes, and provide their recommendations to the County Commissioners. LaDana asked if the Commissioners were required to make a decision that night. Wally said they were not. The only way they could do it that night was if they scheduled it as a meeting on their official agenda, which they should do to take the hearing. They could say it was a public hearing with the Planning Board on bylaw revisions and perhaps decision. LaDana suggested they ask the Commissioners if they wanted to do this. Wally noted it saved a bunch of time and got it through in a hurry.

Motion made by John Fleming, and seconded by Steve Shapero, to recommend adopting the changes as discussed and to present the changes to the Commissioners for their consideration. Motion carried, all in favor.

DISCUSSION: PRIORITIES, TASKS & DIRECTION (8:13 pm)

Steve R prefaced this section as intending to clarify (after the fact) as to what the Planning Board members did. He thanked LaDana and the staff for what they did for the Board. As he studied the statutes and the Planning Board handbook, it became obvious that the way this system was designed, the Planning Board took on the responsibility of planning. In order to get the job done, they had a staff to implement these kinds of things with which the Board came up. That hadn't been clear to him over the years. It seemed like it was driven the other way, but in fact, it was actually supposed to be driven from the Planning Board to the staff. The staff were doing these functions for the Board, and doing the things that the Board certainly couldn't do in two hours once a month. Amongst those things, he pointed to the graphs and to items on which the Board

was and was not involved. (See attachments to minutes in the April 2016 meeting file for graphs.) LaDana noted the data wasn't always comparable over the years. They'd changed their methods of tracking over the years. Steve R thought it was important to note as the Board was doing more work here, especially in the last 6 or 8 months as they'd been introduced to a lot of big projects, the Planning staff was doing a lot of stuff in which the Board wasn't even involved. He thought it was important for them to realize that. He thanked LaDana and the staff again for their work.

LaDana said the data wasn't good to try to pull stuff together so she just did the best she could. She thought these graphs gave the best kind of snapshots. The staff did a lot of other stuff that the Board could see in the responsibility sheet. She didn't go into everything there. She wanted to give them a basic idea of some of the things the staff did. Members got packets but might not understand what went into those to get to that point. Staff did other tasks alongside putting the reports together for the Boards. If the reports showed up late, this time of year it was because a flood of lakeshore applications came in this time of year and staff were trying to facilitate permits needed before the lake level went up.

LaDana pointed to the graphs regarding the decline in the number of subdivisions. In the subdivision regulation update in 2010, the Planning Board gave the Planning staff the ability to review first minor subdivisions so those went to the staff and Commissioners. The Planning Board didn't see those anymore. Steve R affirmed with LaDana that the public review for a first minor subdivision was the Commissioners meeting. LaDana explained the County sent out a courtesy notice to the neighbors so they would know what was going on and would have an opportunity to comment. Under state law this was not a requirement. Janet confirmed with LaDana that the first minors followed the Density Map & Regulations (DMR).

LaDana thought explaining to new Board members what kind of stuff the staff did sometimes fell through the cracks. The long-range Planning tasks table gave an idea. It showed the long-range things the Planning staff dealt with. The first 18 showed items the Planning Board was tasked with. Other ones came into play that they hadn't even created yet. Janet pointed out the DMR was missed in the chart. LaDana said that was unintentional and it should be added.

LaDana noted the County had multiple Boards. She hadn't put the Board of Adjustment on here. She described the two other Boards shown on the sheet and the specific areas they covered. These were additional pieces that fit in to the staff's tasks.

The DMR needed to be added to the list. If other items jumped out that she missed, she asked the members to let her know. John asked if the Planning Board had responsibility touching the Highway Corridor such as signage or other items. LaDana thought the Commissioners were dealing with that. The Planning staff were not. Janet thought the Growth Policy said they were going to work on sign regulations. It was put off when the subdivision regulations were being updated and then there wasn't time to work on it. They wanted to work on that because the enforcement wasn't good. The Tribe wasn't permitting new signs on Tribal land. A few signs had gone up that weren't consistent with the size that they'd agreed on informally a long time ago. LaDana said that wasn't a current task. That could be something they added to the Growth Policy. She hadn't brought the color Growth Policy circle graphic tonight. John mentioned he'd

thought about [signs] for a long time but they hadn't had time. It was always back-burnered. LaDana didn't think it was in the circle but it could be added to it. John said it would have a big impact.

LaDana noted that [the tasks] were not in a particular order. As they could see, many of the zoning regulations needed updates either in the 1st and 6th year or the 5th and 10th year of each decade. The Growth Policy needed updates every 5 years, per State law. Lake County's growth policy was from 2003 so they were due for an update on that. The subdivision regulations would typically have to be updated (and sometimes the zoning regulations) after every legislative session if there were changes to be incorporated. Typically those were minor changes.

Janet asked about the subdivision regulations that required specific review in 5th and 10th years. Could that be changed so a specific review time was not required, or could that be on an agenda and considered a review if there were no comments? LaDana thought that was important to discuss. She agreed that review deadlines were a good idea but obviously the staff could not accommodate them with the other work load and the Board's work load. They should have updates periodically but they needed to be realistic about what they could accommodate. . Maybe it was like what Janet described, where you put it on the agenda. If no one showed up, you opened it up every couple of years for that but didn't do a full-blown update. Janet said they could ask the people in the affected area if they felt a review needed to be done. She asked what amendments had been done recently. LaDana pointed to little amendments in the Upper West Shore and Finley Point. Those were brought by the people in those areas. They did do the Merritt Ranch Zoning District, which was a 9,000-acre proposal which [the owners] brought to the County. Those applicants didn't include a specific review period. It would happen if they wanted to do a review or if state law changed where staff and Commissioners would do an update. Janet proposed trying to simplify things where they would have notice and be done with it if there were not comments, and they would have met the criteria. They could ask the people in those zoning districts if the 5th and 10th (or 1st and 6th) years were necessary for review or if it was just as needed.

Steve R suggested one thing to consider was to amend the wording of the review period for each zoning district at 5 or 10 years after the date of adoption so they weren't grouped in the 5th or 10th year of the decade. When [the County] went to make such an amendment, they could let the area know that other changes would be considered at the same time. LaDana mentioned that Swan Sites, Upper West Shore and Finley Point, were adopted at essentially at the same time, so there would be three at one time to review. They couldn't accommodate that. What could they do to facilitate these updates happening but not be so locked in that there was no way they could meet the deadline? Janet thought they could do an amendment that said to review as needed or as requested and Steve R added if that met the letter of the law and satisfied the people. LaDana said the law didn't say when these had to be reviewed. Steve R suggested an alternative would be to have a range. LaDana pointed to what happened with the DMR. It didn't work with that. She hated to lock them into something they couldn't meet.

With the Growth Policy, LaDana noted state law said they should review it every 5 years, so they should do that, just to freshen it up a little. It didn't mean you did a totally new growth policy. You just refreshed it to current conditions. Steve R thought the idea of a review could be put on

the agenda. The Board members could look at it at home and ask at the meeting if someone noticed something that needed to be changed. LaDana said they could ask where [the County] was having issues or where they'd seen issues. Steve R said it was possible the Board would decide no changes were needed at that particular interval. They might not make changes but they did do a review.

John asked if Steve R referred to the growth policy or the zoning districts. Steve R said it could be almost any of the things on the list. John asked if there were notification requirements for the people in it. LaDana replied that there were, especially for the zoning. It could be a tedious process from start to finish. For example, she thought Merritt Ranch took her 4 months with a number of notices that had to be done, including where you had to go out in the neighborhood and notice and do steps. The County process was more difficult than the City process. This came from state law. You had to do notice to do a review. It wasn't simple. That was for zoning. Subdivision and some other things had simple notice requirements. It depended on what state law said about it. The Parks and Trails plan was a tool of the County Growth Policy. The Parks Board went through creating that document with their consultant, then brought it forward to the Planning Board and finally to the Commissioners for adoption. That document probably didn't need to be updated. They set a 20-year limit on that so it might come back to the Planning Board over time when the Park Board said maybe they needed to look at it again. That would be a lower-priority one.

LaDana touched on the Airport Affected Area regulation. Some Board members might recall the St. Ignatius set came to the Board. That ultimately didn't go anywhere. They let it die. The Ronan set was adopted in 2013. She hadn't received inquiries on those or questions for permits. They were required by FAA for something like grant funding. She didn't see updates coming for that unless something changed in the specific part of relevant state law. The staff could periodically take a look at it, or the Board could request this to see if updates were needed. If there were none then they didn't have to do something with it. The Airport Board could come forward and request an amendment.

LaDana brought up the Building for Lease or Rent regulations. Part of the issue was that 2013 state law said these regulations needed to be adopted. In subdivisions for rent or lease, if you had multiple single-family residential on a lot (not RV spots or mobile homes) or multi-family units, where something was being rented out, that was previously required to go through subdivision review. From a court case came Buildings for Lease or Rent. The thought was you'd review these types of development for impacts and make sure the impacts were mitigated but it wasn't a full-blown subdivision review. It was meant to be an easier process so they could get through and get rental units on the market without going through subdivision review to do that. Steve R checked that there was a public hearing. LaDana replied she wasn't totally clear on how the whole thing was supposed to work. She wasn't sure on the public hearing. They needed to take that into consideration. There might have to be, or a certain number of units might trigger a public hearing, similar to the first minor subdivisions. If you could put that in the regulations, it might put on the staff to do the review if they met minimal criteria so those that met the minimal criteria didn't go to the Planning Board. Staff hadn't done much work on this. Part of the issue was to figure out how they were dealing with the DRM. With Buildings for Lease or Rent, you weren't creating parcels. If you weren't creating parcels, the DMR didn't

kick in. Staff wanted to deal with the DMR and see how that played out so they could figure out how to implement these regulations they were supposed to have. Steve R asked if the County was in trouble for this. Wally replied the problem wasn't that they were in trouble. It was that it was a hard thing to regulate and they had no rules to do it. Steve R checked that this didn't apply to renting a property with a single-family residence on a single lot. Wally said they didn't have to go through this. LaDana said it depended on the number of units someone wanted to rent out. There were criteria to meet, which were written into the Building for Lease or Rent regulations.

Steve R asked if this hadn't come up as a high priority since none had come in the door. Wally said also there was a whole bunch of stuff on the top of the pile in Lake County. LaDana said Lake County wasn't the only county that hadn't adopted them. You either had to write it into your zoning regulations, in which case you were exempted out in that area, or you had to have Building for Lease or Rent regulations. In Lake County's case, the whole county was zoned. If they could figure out how to do it, they could write it into the zoning and DMR regulations and then they wouldn't have to have a separate set of regulations. To do that, they needed to figure out how the DMR would work with these regulations. If they couldn't do that, she didn't know how to make the regulations work, since the majority of the County fell under the DMR. Wally said the problem was the density zoning didn't apply because it only dealt with parcels.

Janet asked about the other zoning district. LaDana responded a lot of the other zoning districts spoke to Subdivision for Rent or Lease and needed be modified to include the Building for Lease or Rent procedure. That would be covered and cleaned up even if they didn't have it for the density area. Janet asked if the DMR could possibly be revised to not just be for new parcels. It could be for buildings for lease or rent. LaDana said they could write that into the document. The document as currently written said it only applied to the creation of parcels. She didn't know how they would get to that point if they weren't creating parcels. Janet said they could add language. Wally said they could only do that if they got the Growth Policy done and justified it.

Regarding the Floodplain regulations, some of the current Board members were involved in the 2013 update. Periodically those needed to be updated. The state provided model regulations and much was taken from there. Some things in the model regulations might be nice to update but they weren't huge changes. If and when they had time, it would be good to go back and update those. The floodplain maps dated from 2013. Prior to that, the maps were from 1987. The maps were updated when the money was available. DNRC had done grant funding for [the County] to be able to get those updated. They digitized things and part of the LiDAR went into that. It took a substantial amount of money so the updates didn't happen often. [Lake County] would have to wait until their turn came around for the state funding again.

LaDana knew the Board was aware that the lakeshore regulation update began when Tiffany Lyden was on staff. She worked on them, as did LaDana, Joel, Karl and others. Staff hadn't had one set version pulled together. Staff needed time to be able to pull the pieces together. Staff had brought a portion to the Board one night and make comments and notes on it. She didn't know if those notes had been incorporated into a final document. They hadn't had the time to pick it up and look at it. In 2014, a small amendment was done, due to the regularity of seeing variances on that item. They did a minor update to accommodate some of the variances they were seeing and to become more consistent with some of the neighboring regulations. It was

something the staff really wanted to get back on but it was a matter of where they thought this fit in the priorities. She thought it might be a good thing to bring to the top because they did have some version they could work with. The other thing that came into play was if they were going to update the growth policy, there might be things they might put in the Growth Policy that they would want to incorporate in the lakeshore regulations. They should keep that in mind. She thought [staff] received quite a bit of education in the last 8 months about how the lake worked. They'd changed some of their ways of thinking and might want to incorporate this into the lakeshore regulations. The working version might not be the set-in-stone version that they wanted at this point. They could work on getting a draft pulled together for the Board, bring that forward and see where they wanted to work on it more. This would get [the lakeshore regulations] moving along. Steve R inquired about the last time the Board worked on this. LaDana estimated maybe 3 or 4 years ago.

LaDana mentioned the subdivision regulations, which were updated in 2010. Sections needed updating since the Commissioners changed things, such as a title report no longer being required for exemption claims. A memo was written to say it wasn't required but it wasn't taken out of the regulations. The exemption review committee meeting with the applicant was eliminated. Environmental Health, Clerk & Recorder and Planning review the applications. The Treasurer didn't want to review them. When Mark Russell was with the Attorney's Office, he didn't think he should review them in case he litigated them down the road. The process should be updated in the regulations. There were some clean-up items as well. The Commissioners didn't like some of the subdivision regulations. Part of that might be that they didn't have the Growth Policy to back it up. [The County was] learning more about updating the growth policy to have backing for what went into the regulations. If that was done, she thought the subdivision regulations would be a little more palatable to [the Commissioners]. There was a thought that there was too much regulation in there. At the same time, what was in there was a lot of mitigation for what you were doing when you were developing.

Steve R thought it would help to come up with a few high priority items. To try to prioritize the rest of the items, it would help if staff looked at each item and said how much time might be needed to do the amendments that were thought necessary, assuming this was the only background task. LaDana said that would not be the case. Steve R understood that. If they knew that, they could say which ones were fairly short and could be done and crossed off the list. He thought they were close on finishing the Right to Farm policy. They needed to discuss and agree on what that process was. In one or two more meetings, they could hopefully finish that. The growth policy was important and should be right up there on the list.

LaDana described that Gale was talking to people about pulling together some data and statistics that were needed. They had a meeting tomorrow with the UM Business and Economic Development Dept. Wally clarified this was part of the Business school, involved with business and economic research.

Steve R asked what staff needed from the Board tonight. LaDana replied they needed to come up with what they thought was realistic with the staff available or with what staff the Commissioners would give them. The Board needed to write a letter to the Commissioners saying 'we need to make these things our priorities' because what was happening was they

would start down a road on a project and it would get dropped and never finished. It wasn't necessarily the staff's fault. With the Polson Development Code, she spent countless hours on it. The City moved forward on adopting it. The County couldn't agree with what the City was adopting so the County wasn't moving forward. [The County] put a lot of time and energy into it and now it just was hanging there. That was what happened. [The County] put a lot of time and energy into [a project] and it would get stalled and not go anywhere. They'd done this with the Polson Development Code and it had happened some with the DMR, and with the Lakeshore Protection regulations. It would be good for the Board to write a letter saying what they thought were their priorities.

Sigurd asked about the Tribal setback from the lake. Janet said they had a recommendation of 50 feet but as far as the Shoreline Protection regulations, she thought it was 20 feet. Sigurd said the City of Polson recommended 20 feet and he thought it was 50 feet. Steve R said the City did 20 feet in the new Resort zone. Sigurd said he wondered if those two things clashed. Steve R said they did clash. That was one of the problems with the Polson Development Code right now.

Steve R asked Board members what they thought the priorities should be in the next few months. John said if Gale was working on the Growth Policy, let him go. That would be great. He was great at digging out facts. LaDana said they were just starting at the ground right now. They were trying to see how much it would cost to have someone do some of this for the County. John thought that could be number one, even if it wasn't done [first]. Other things were tools for implementing, like the DMR and Right to Farm. There were lots of notes on the Right to Farm policy. It wasn't done? Steve R confirmed it wasn't. Janet asked if that could coincide with the Growth Policy. Part of the Right to Farm policy was educational, which they discussed in March. Did they come to consensus on that? Steve R didn't think they had. John asked if the current Growth Policy had a Right to Farm section. LaDana said it wasn't contemplated back then.

John thought the lakeshore protection needed to be a priority because of its value to the people who live here. Steve R didn't think they were at high risk of development that would imperil the lake with the lakeshore protection regulations that they had. The problem with the current policy was it wasn't compatible with Flathead County and the Tribal policy so it caused confusion. John thought they were doing that [with the revision]. Steve R said there were certainly some problems with clarity and understanding. He pointed to last month's lakeshore item with the person who wanted to put tires in Swan Lake. They were able to handle those. Because so much work was done on it, they wanted to put it at some level above the bottom. He thought they had an opportunity to finish the Right to Farm policy and cross it off the list.

LaDana said that was why they took on the Right to Farm policy a few months ago. It was one of the shortest tasks they could accomplish. They knew the Growth Policy and some of the other things would take a long time. Right to Farm seemed like something they could move through fairly quickly. Steve R suggested the Board consider that with the Right to Farm policy, they had a policy or set of regulations from which they could produce a brochure or information sheet that was the piece the public saw. The brochure could be concise, simple and easier to understand. Some of the detail they came up with that made the Right to Farm policy long, made a lot of Board members uncomfortable with what the public would think. The public didn't have

to deal with that policy itself as much as they would deal with the brochure or the single sheet that was produced based on the policy. That was something to think about before they got started on that again. John said he thought that was what the Board decided when he read the minutes. Steve R didn't think they'd agreed on it totally. If it was put on the agenda again, that was the idea with which he'd like to start. Hopefully they could move that through in one or two meetings to have something they could pass on to the Commissioners. Janet thought it was premature before the Growth Policy.

Wally explained of the list of things they had to do, there were two that the Growth Policy didn't drive. One was the Right to Farm policy question, which was a statement to incorporate that agriculture was not a nuisance, but it went into a whole bunch of stuff, including conservation easements, subdivisions, mitigating impacts, water flows, stream discharge and don't overspray. It drove a lot of stuff that went into the Growth Policy that drove the subdivision regulations etcetera. It was a statement of policy but that policy drove a lot of [the] bus. By state law, no rule said the Right to Farm policy had to be consistent with the Growth Policy. It was not bound. Similarly, the only other one in the stack before the Board that wasn't bound was the shoreline protection ordinance question. He gave some background. Per John's comment, [the lakes] were a really important asset or feature of the vicinity. It was more of a document used on a varied basis for permit and whatever else. It also became a driving feature for a lot of the stuff in the Growth Policy such as capital improvement programs, sewer around the lake, water quality, not discharging stormwater, etcetera.

The two simpler documents that helped drive the Growth Policy were the two that they identified and that they'd gone a long way to get done: Right to Farm and the question of the shoreline regulations. There was no reason they couldn't be concurrent. Remember that as they did the Growth Policy, some of the stuff they considered in Right to Farm needed to be plugged into that document and similarly, the importance of lakesides, lake habitat, wildlife on lakes and so forth got plugged into the Growth Policy too. Part of the reason you mitigated subdivisions and roads around water bodies was you didn't want the salt and so forth going in. Two documents could [contribute] greatly to the policy of the growth policy but the growth policies that documented the other things had to be consistent with, by law. They drove the bus. That was the legal perspective on the two.

When the Board identified those two things as achievable and fairly short term, these were also things that would help them a lot in terms of redrafting and drafting the Growth Policy. They were doable. If they did those two first, they would lay some of the basic groundwork for the Growth Policy, which was the groundwork for the rest. He gave examples of how Right to Farm overlapped into the question of streamside/streambed protection and shoreline protection. It was easy to put the rules into the growth policy ideas when you [then] wrote the rules for zoning, density, subdivision, building for lease or rent and so forth. Steve R checked that Wally's recommendation was to work on Right to Farm policy and Lakeshore Protection regulations before the Growth Policy. Wally suggested starting the Growth Policy discussions and gathering the data, but in terms of achieving two things in relatively short order, try to get Right to Farm done and a lot of the stuff on the lakeshore regulations done. If they could get those two things done soon, they would drive part of the growth policy bus, and that mattered a lot. John felt they were trying to get it perfect, and they wouldn't do that. They would modify it as they went.

Someone would come in with an exception that the Board would agree with. He thought the Board was backing off because they were afraid to say they were done in case they were wrong. LaDana said it wasn't that. It was the matter that they didn't have the staff to put it together.

Janet asked about the staff's level of concern with not meeting the zoning review deadlines. LaDana replied there was only so much that she and her staff could do. John asked if they were all citizen-initiated. Wally said a lot were but not all. LaDana added that most were [changed] to part two zoning. John said if citizens hadn't said there was a problem with citizen-initiated zoning, he guessed there wasn't a problem. LaDana explained the problem was that the County took them on as county zoning at some point in the process so they were no longer citizen-initiated. Wally gave a problem on the legal end where the zoning was driven by the growth policy. Changing and updating the zoning regulations before the growth policy was done was a really hard thing to defend.

John concluded they should do the other two things [Right to Farm and Lakeshore] first. Wally said those two things laid the tread mark and the floor plan for the growth policy. The zoning regulations that regulated around the lakes needed to accommodate a lot of the stuff that was inside the shoreline regulations and the Right to Farm stuff. You had two broader policy documents that [inaudible] things, like shorelines, lakes and agriculture. Those were a big part of what went into the subdivision, the zoning and so forth, and those had to be consistent with the growth policy. He didn't worry about updating the zoning regulations. Having them consistent with the growth policy was hard if the growth policy didn't have the stuff in it to justify it.

Janet asked if he put the DMR in the same category as zoning. LaDana noted it was zoning. There were two issues with zoning that they needed to address: the Lake Mary Ronan issue and Swan Sites. Joel [Nelson] brought both of those forward to the Board. At some point, the proposal from Mike Maddy [at Lake Mary Ronan] would come forward about that. She'd had consultants asking about Lake Mary Ronan over 6 months ago. They still hadn't done the update that was needed to address the map issues that were there. Swan Sites was the same in that they knew there was a map discrepancy there and needed to fix it with an update. They hadn't previously had an attorney that could help them do that. Now they had so many other projects that they hadn't had time to do it.

Janet asked how critical LaDana would say those were in relation to the Right to Farm policy and the Lakeshore Protection regulations. LaDana stated she thought those two needed to be done. Janet said those should then be the first priorities. LaDana said they'd known those issues for several years. Janet listed the Right to Farm policy, then the Lakeshore Protections regulations and next the Growth Policy as the next priorities. Then they would do the rest of the zoning. Wally added the subdivision regulations and so forth. LaDana asked about the DMR. Janet said that would be part of the zoning. They could prioritize that as the first zoning issue they needed to talk about. Before they did that, she thought it would be useful to look at which zoning districts already proscribe density and which ones didn't, and then look at the [frequency of] reviews and try to get amendments. If they were going to amend Lake Mary Ronan and Swan Sites zoning, then maybe they should propose an amendment about the reviews and take out those review periods. LaDana said the other thing they probably needed to address was

where it said subdivision for rent or lease. They needed to change that to buildings for lease or rent. That would take a little more work too. At least those would be covered and they would have building for lease or rent. That made sense because those were areas where they were seeing people who wanted to do the rentals.

Janet checked that those two zoning districts would be the top priority, including building for lease or rent, taking the review period dates out and amending the maps. LaDana asked if they should check for other things in those two they would want to change. There could be things that didn't comply with state law. She hadn't looked at them in close detail. Steve R said they would certainly want to look at that if something didn't comply with state law now.

He continued that the discrepancy between the regulations and the map was what stopped Lake Mary Ronan. LaDana said she looked at that, and it didn't seem as big an issue as Joel had made out. She just needed an attorney who could help explain it to her. John agreed. He and LaDana agreed it was really close. Steve R thought with help from GIS, maybe they could get that particular issue cleaned up so they could feel confident that when they looked at the rest of that zoning regulation, they didn't have to worry about the lack of match between the map and the written description. He checked that lack of match between the written description in the regulations and the map was the issue. LaDana said it was that and also that it didn't match what was on the DMR. That came into play too. She would have to look at Joel's notes again. His thought was to scrap the whole thing because it couldn't be saved. She thought they could save it and just needed the attorney to tell her that. It seemed reasonable that they could save it.

Steve R recalled that there was some issue of did you change the regulation to match the map or did you change the map to match the description, and legally, which one did they need to do, if they didn't know which one was wrong. LaDana added they needed to fix the DMR as part of that. Janet checked that this would be an amendment for that particular part and LaDana agreed. Swan Sites was the same way. She didn't think there was a huge issue up there either. It was just another map discrepancy that needed to be fixed. Steve R said somebody drew the map but the description wasn't the same. Janet asked if the members agreed with looking at those two zoning districts and cleaning up the regulations and the maps.

Steve R said those two districts would be first priority. Second priority would be Right to Farm. Third priority would be the Lakeshore Protection regulations. Fourth priority would be the Growth Policy. Janet added that the fifth one would be the DMR.

Steve R thought the Board needed to send a letter to the Commissioners. Could staff draft a letter with direction from the Board with these priorities in the given order? LaDana thought the letter should come from the Board, not something the staff wrote up. It was part of the job [of the Board members] to bring something forward to them. If she wrote it, even though they were telling her what to do, she didn't want to put a spin on it that wasn't what [the Board members] intended. Janet thought they'd like a paragraph from [LaDana] about the zoning and the things that needed to be cleaned up in the zoning, such as state law issues. LaDana said she didn't know about [changes from state law] because they hadn't looked at them for so long. They hadn't been doing the updates because they didn't have the staff.

John asked if a motion from the Board to the County Commissioners to make it more official would help. Steve R thought they needed a motion on the priority set they just discussed. From that, they would draft a letter to the Commissioners.

LaDana knew they put the [bulk of] zoning regulations fifth on the list. In some districts, such as East Shore, Finley Point and Upper West Shore, they were seeing people who wanted to do the vacation rentals that they couldn't do and the regulations addressed subdivisions for rent or lease. If they got the language for Lake Mary Ronan and Swan Sites, it would probably be easy to plug that in. John agreed. Steve R said they picked four items, including the Growth Policy. A year would go by before they got that done. He suggested that they needed to move forward for several months on these and see how they were doing before they started trying to sneak some of these other things in. LaDana understood that. Her problem was that people were coming through the door, wanting vacation rentals. The regulations weren't written to allow for that. How was she going to tell them they could do it? Janet said to tell them they couldn't. LaDana said they would do it anyway. Then they didn't comply with the zoning and they were doing something illegal. That put her in a bad situation. If the zoning allowed for it, they could do it. If the zoning said they needed to go through subdivision for rent or lease, it didn't exist for those units anymore. Steve R thought they needed to point that out to the Commissioners in their letter. John suggested putting a moratorium on it. They weren't ready for it. Steve R stated that they needed to let the Commissioners know this was going to be problem because they didn't have staff time or board time to work on it. They couldn't do all of the stuff at once. John suggested they put that in the letter too.

John asked if Steve R would write the letter. Steve R said he would work on the letter with LaDana. Janet suggested it could be emailed to the Board members and they could comment on it. Steve R said they would hopefully have a close draft for them to vote on at the next meeting. LaDana said she didn't mean to throw those other zoning districts in there but one of the most common things they were hearing now was that people wanted vacation rentals and the regulations spoke to something that didn't exist anymore. When they walked through the door, she didn't know what to tell them because they didn't have regulations to address it. What did they fall under if you didn't have the regulations? [The County] had zoning regulations that spoke to something that no longer existed because [they] hadn't updated them. Steve R confirmed with LaDana that the State eliminated the thing they did mention, which had been their tool.

Motion made by John Fleming, and seconded by Janet Camel, for Steve Rosso, aided by LaDana Hintz, to draft a letter to the Commissioners passing on this priority list of 5 recommended priorities from the Planning Board (discussed above). Motion carried, all in favor.

Editor's Note—Recap from above discussion:

- 1. Lake Mary Ronan and Swan Sites zoning districts: Weight given to correct discrepancies between regulations and various maps, and while that's happening, amend review period, put in Buildings for Lease or Rent to replace subdivision for**

rent or lease and correct other issues of state law that might be noted. Potential imminent projects, especially for Lake Mary Ronan, and vacation rental requests.

- 2. Right to Farm: Drives stuff that goes into the Growth Policy, not the other way around. Lays groundwork for Growth Policy. Begun in recent months by the Board and one of the shortest tasks on the list. Take opportunity to finish and cross off list.**
- 3. Lakeshore Protection regulations: Drives stuff that goes into the Growth Policy, not the other way around. Would contribute greatly to the Growth Policy and lay basic groundwork for it. Tremendous amount of work done by Board in previous years. The previously discussed and revised pieces need to be assembled and presented as unified draft, work yet to do (including changes based on recent learning) identified and taken from there.**
- 4. Growth Policy: RTF and Lakeshore regulations lay groundwork for Growth Policy. In turn, Growth Policy lays groundwork and basis for zoning, including DMR.**
- 5. Zoning district updates, with DMR prioritized as first among those: DMR is high in the thoughts of the Planning Board, with the prior work building the basis and tools so it can be appropriately dealt with.**

OTHER BUSINESS (9:21 pm)

Wally relayed an apology from Frank Mutch, who was needed to help with a sudden and unexpected situation and thus unable to attend.

A buoy application would be considered at the next Planning Board meeting.

Motion made by Janet Camel, and seconded by Steve Shapero, to adjourn. Motion carried, all in favor. Meeting adjourned at 9:22 pm.