

1 **BENZIE COUNTY PLANNING COMMISSION**
2 **July 1, 2008 2009^{cf}**
3 **Minutes**
4

5 **MEMBERS PRESENT:** Pitcher, Moorman, Damm, Ross, Ross, Roberts

6 **MEMBERS EXCUSED:** Tanner

7 **STAFF PRESENT:** Neiger, Flynn

8 **OTHERS PRESENT:** Wilfred Swiecki, Dr. Canale, Jim Olson, Bruce Hawthorne,
9 Warren Lanphear, Scott & Aimee Johnson, Glen Young, Jim Coats, Gareth Kuhl, Ned
10 Amstutz, Ed Amstutz, Mark Haar, Jon Hulsebus, Jim Marchio, William Campsan, Mark
11 & Jane Wilson, Mark & Roberta Lakin, Al & Gretchen Amstutz, Frank & Tamra
12 Perzanowski, Al & Elaine Pischke, Lusan Louie, Nancy Patterson, Jerold Patterson,
13 MaryAnne Sherabaker, Will Amstutz, Cortney Jones, Scott & Debbie Jones, Jim
14 Berridge, Stever Peterson, Bob Baker, Ralph Rogers, Tom Schoonover, Jerry Heiman,
15 Barb & Skip Campbell, Gordon & Betty Lewis, Peter & Vivian Reed, Mike & Linda
16 Pattison, Bob Kirkland, John Damm, Bruce Stowe, Jane Stowe, Don Seiple, Jane
17 Seiple, Betsy Bower, Don Peppard, Sandy & Jerry Grimes, Joe Mosier, Jim Rosinski,
18 Nancy Dolph, Rich allen, Bill Berridge, Tyler Stamey, Maris Ziemelis, Steve Hildebrand,
19 Robert Muller, Marie O'Leary, Terrance O' Leary and many other guests.
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23 **I. Call the Meeting to Order** Chairman Ralston opened the meeting at 7:01 p.m.
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25 **II. Approval of the Agenda** Motion by Pitcher seconded by Moorman to approve the
26 agenda as presented. Ayes: All Excused: Tanner Nays: None **Motion Carried**
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28 **III. Public Hearing – Platte Lakes Area Management Plan Amendment to the Zoning**
29 **Ordinance.**

30 A. Open the public hearing, welcome to applicants and guests Chairman Ralston opened
31 the public hearing at 7:02 p.m. and welcomed the applicant and guests.

32 B. Introduction of Planning Commission and Call for Conflict. Each Commissioner
33 introduced him/her self. No conflict stated.

34 C Staff Analysis

35 ● **Neiger** read/reviewed his June 12, 2009 Staff Analysis, commenting that the plan is
36 unenforceable and could cause litigation.

37 ● **Moorman** requests more info on what is unenforceable.

38 ● **Neiger** states we will have to review the letter in the packet from County Counsel Figura
39 in detail. He adds that Dr. Grobbel's letter is in the packet also. **Neiger** states we do not want
40 to add anything else to the zoning ordinance that will add cloudiness and have to have a
41 consultant clean it up.

42 ● Working with Lake Township on language agreeable to both the Township and County
43 is discussed.

44 ● There is discussion on County Counsel's suggestion that Benzonia Township could
45 adopt an ordinance dealing with behavioral issues. **Ross** asks if some of the language could
46 go in the ordinance but leave the conduct items out for the Township to deal with. It was
47 stated that Jim Sheets had commented at a previous Zoning Ordinance Rewrite Committee
48 meeting about creating a freestanding township ordinance.

1 ● **Moorman** asks if the county can enforce a ban on phosphorus. **Neiger** comments that
2 there is a fairly new law on that but there are restrictions. **Moorman** comments that the Turtle
3 Lake Ordinance banned phosphorus a few years ago.

4
5 D. Invitation to Applicant to present his request and any further comments
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7 ● Willfred Swiecki passes out and reads his 4 page presentation (Copy in the
8 amendment file). He explains that Benzie County offered a natural buffer zone with a path to
9 the water, which the PLIA does not want, as it will contribute to the phosphorus levels. He
10 hands out to the Planning Commission a 1989 document on non-point source pollution-
11 vegetative buffer strips. He states that the proposed ordinance does not mandate that the
12 buffer zone be mowed and harvested but if a property owner wishes to it must be done
13 correctly He states Bob Blank, Lake Township Planning Commission Chairman, previously
14 indicated he would work with the County on changes. He states the PLIA cannot speak for
15 Lake Township. He introduces Dr. Canale

16 ● Dr. Canale introduced himself and gave a brief biography. He states he works with the
17 PLIA and the State of Michigan on the phosphorus issue. He states he has more scientifically
18 credible data in this project than any other he has worked with.

19 ● He gave a power point presentation (copy in amendment file) following the data from
20 the 70's until now. He states that there is now clearer water. He explains how the Settlement
21 Agreement controls the amount of phosphorus allowed in the lake. He explained the process
22 of collecting the data:

- 23 ▪ Looked at hi, low and typical year,
- 24 ▪ How the phosphorus levels are tracked,
- 25 ▪ A 20 lb bag of fertilizer has 2 lb of phosphorus, and
- 26 ▪ The different lake plants and how they absorb phosphorus or indicate too much

27 phosphorus.

28 ● There was some discussion on septic systems, whether or not they were a source of
29 phosphorus. **Dr. Canale** agreed that multiple user systems would help but only if they were
30 implemented properly. A citizen comments that most systems around the lake are now holding
31 tanks not septic.

32 ● **Dr. Canale** states in his opinion a wild buffer zone even 30 feet wide will not do much to
33 prevent phosphorus from going to the lake.

34 ● **Wilfred Swiecki** comments that while vegetation will absorb phosphorus and heavy
35 metals, when the plants die and decay then it is distributed back into the lake. Removing the
36 dead or cut vegetation will control that.

37 ● **Wilfred Swiecki** read a past letter from Gary Whalen (MDNR), on the proposed
38 management plan. A copy of the letter is in the file.

39 ● **Karen Roberts** asks if the study determined where on the lake the problem spots are.
40 **Mr. Swiecki** explains that what is deposited in the lake in one place moves across the lake in a
41 few hours.

42 ● There was discussion on non-point sources farther up the watershed than just the lakes.

43 ● **Wilfred Swiecki** requests that the plan be adopted as written or denied. He states the
44 details can be worked out with Lake Twp. later. He states if people want the buffer natural that
45 is fine, just if it is cut or mowed the debris must be removed to a safe place.

46 ● **Neiger** questions a part of the study that was done addressing lawns and gardens and
47 states it does not address natural vegetation strips. He explains that on Crystal Lake there is
48 concern with wind drift and erosion. He explains that anything done in the water is a MDEQ
49 issue. He explains that soil erosion and stormwater control are controlled by the soil erosion
50 ordinance.

- 1 ● **Katherine Ross** asks for clarification on page 4, the last sentence of paragraph one, of
2 the PLIA “Public Hearing Comments” read at the beginning of the meeting.
- 3 ● **Mr. Swiecki** responds that *the document* is an opinion. He states if someone is building
4 a house, and is told they need a retention basin, they will probably install the basin and not
5 stop the building project. He states they would like to get the phosphorus ban throughout the
6 county
- 7 ● **Ross** asks how it will be enforced once the permit is received? Who will be watching to
8 see that the debris is picked up and other requirements enforced? **Wilfred Swiecki** states he
9 and the PLIA will. Attorney Jim Olson says neighbors can enforce against their neighbors.
- 10 ● **Neiger** states our attorney gives us an opinion on whether or not we can enforce our
11 ordinance. He looks at state and case law, and if he finds a problem he lets us know. He has
12 concerns about it being lawful for the County to enforce this.
- 13 ● **Jim Olson** thinks Mr. Figura was thinking about police power ordinances at the County
14 level. However, he adds, the statute is quite broad and allows protection of natural resources.
15 He thinks the authority exists, and one way to find out would be to move the ordinance on for
16 legal review and find out then. He believes that the County has the authority to adopt the Plan.
17
- 18 E. Open Public Input Chairman Ralston read public input procedure and opened Public
19 Input at 8:29 p.m.
- 20 1. Proponents Statements (Those in favor of the project)
- 21 ● Richard Allen states that it looks like everyone here is in favor. All in the audience were
22 in favor of the plan, by a show of hands.
- 23 ● Bill Berridge states his family is the 5th generation of family on the land and they feel
24 they are custodians of the land. He feels the Planning Commission should step up and do
25 what is right for the land whether it is enforceable or not.
- 26 ● Jerry Heiman: It is embarrassing to have 2/3 of the lake under one zoning ordinance
27 and 1/3 having another. He heard Mr. Figura at the previous meeting and it seems that
28 counties do not have the clout. He thinks the township should do it, but Benzonia Twp will not.
- 29 ● Jim Marshall states his property is split between Lake and Benzonia Townships. He
30 asks which zoning should he follow? Should he cut in one township and put the clippings on
31 the other? He states it does not make sense to have 2 different ordinances.
- 32 ● Ed Amstutz states he has been coming here for 77 years and has seen the lake quality
33 go up and down. He thinks if that is what Lake Township has done, that is the way it should
34 go.
35
- 36 2. Opponents Statements (Those objecting to the project) None
- 37
- 38 3. General Statements and Questions
- 39 ● Deb Lindgren, Joyfield Twp., asks where the overlay is and if it will it affect Joyfield
40 Township? Ralston responds no, just the Platte Lakes area.
- 41 ● **Jim Olson** speaking for the PLIA, to clarify the previous discussion, on the question of
42 enforcement or police power between counties and townships. He states Dave Niger’s
43 comment about enforcement is true. Zoning is more extensive and Dick Figura seems to be
44 saying you have the power. On the question of grandfathering, he states you are not taking
45 away a vested right. If it is behavior issue and if you have to comply with the standards of the
46 ordinance you have to do it. There is no grandfathering issue.
47
- 48 4. Rebuttal None
- 49

1 5. Correspondence Flynn read the letter from Bruce and Ester Bay in support of
2 the plan.

3
4 F. Close Public Input Chairman Ralston closed Public Input at 8:41 p.m.

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6 Chairman Ralston called a 10 minute recess – from 8:41 p.m. to 8:57 p.m.

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8 G Commission Deliberation

9 • **Neiger** recommends that we recess until a time when County Counsel Figura and Dr.
10 Grobbel can attend. County Attorney Figura attended the worksession meeting and expressed
11 concerns. He would like more information on the concerns before adoption of this ordinance.

12 • **Ralston**, thinks information received earlier should be enough.

13 • **Damm** thinks there is enough clarity in the letters to base a decision on.

14 • **Ross** does not think we need to recess.

15 • **Pitcher** does not have any further questions, she wrote the grant for the Platte River
16 Watershed.

17 • **Roberts** comments that we regulate behavioral issues elsewhere such as noise and
18 keeping hazardous materials. She is not convinced there is a bright line that phosphorus
19 fertilizer is that much different from noise regulation.

20 • **Pitcher** asks her if she thinks this plan is ok. **Roberts** responds yes, we regulate other
21 behaviors and does not think this is any less enforceable than other things we do. She does
22 not get from Attorney Figura's letter that we cannot do this.

23 • **Neiger** suggests having Dick Figura determine what language needs to be in the Plan
24 to make it more enforceable. He states that because Dick Figura is not here to clarify his
25 concerns he feels that it is not ready for approval.

26 • **Ross** makes the motion, "Based on a clear environmental need I move to approve the
27 proposed Platte Lake Overlay Area Management Plan District, pending the development by
28 both Benzie County and Lake Township of agreed upon enforcement language regarding the
29 behavioral issues", seconded by **Damm**.

30 • **Pitcher** asks if it is necessary to have the last 3 words. **Ross** agrees it is not.

31 • **Motion** by **Moorman** seconded by **Pitcher** to amend the motion by striking "regarding
32 the behavioral issues".

33 • **Roberts** asks if Lake Township is agreeable to work with the county. Swiecki states
34 that Bob Blank (Lake Township Planning Commission) stated in a previous meeting that he
35 would be willing to work with the Planning Commission. **Moorman** states that it makes sense
36 because it will provide some protection to that part of the lake. He adds if we can tweak it
37 together so we are on the same page. **Swiecki** comments that he cannot speak for Lake
38 Township.

39 • **Roberts** asks what we do if Lake Township later says no we do not want to change it.

40 • **Damm** thinks Benzonia Township agrees with Lake Township.

41 • There is discussion on whether or not the motion as read would be effective until after
42 agreement with Lake Twp. **Roberts** comments that should adopt, then work with Lake
43 Township.

44 • **Moorman** withdraws his amendment to the motion.

45 • **Ross** withdraws motion.

46 • **Motion** by **Moorman** to approve the Platte Lakes Area Management Plan as presented,
47 seconded by **Roberts**.

48 • **Ralston** asks Attorney Olson, if the neighbors have a right to enforce and if so how.

49 Attorney Olson states they could file a court action based violation of the ordinance and allege

1 they have standing because they lived in close enough proximity and have riparian rights and
2 an interest in the quality of the lake.

3 • There is some discussion on data and reports from Wisconsin and elsewhere. **Dr.**
4 **Canale** comments that there was enough data gathered on the Platte Lakes so that data and
5 reports from other states where the soils and other environmental issues are different is not
6 necessary.

7 • **Neiger** comments that what is not being addressed is soil erosion and shoreline
8 stabilization. The total focus on phosphorus is putting everything else out of wack.

9 • There is some discussion on erosion, seawalls, and shoreline control. **Mr. Swiecki**
10 comments that seawalls do not contribute to phosphorus in the lake and they stop erosion and
11 block nutrients. **Attorney Olson** agrees that natural buffers in steep slope areas are critical
12 (along stream banks, stream bank erosion) and maintaining the vegetative cover as much as
13 possible is important. He adds that steep slopes are not an issue for the Platte Lakes. He
14 states that whatever there is, it has to be maintained in such a way so that there is not a
15 phosphorus release. **Attorney Olson** states that by moving to an overlay, you are recognizing
16 that Platte Lake is a special lake, it has its own set of standards, it has phosphorus issues, and
17 once you create that overlay district you can amend that district to address these other issues.

18 • A State phosphorus ban and other states and counties which have adopted a ban are
19 discussed.

20 • **Damm** thinks we should move it forward.

21
22 H. Decision

23 Roll Call: Roberts: Aye Ross: Aye Damm: Aye Moorman: Aye Pitcher: Aye
24 Ralston: Aye Tanner: Excused **Motion Carried**

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26 **Motion** by Roberts seconded by Moorman to adopt Dr. Canale's report by reference as part of
27 the overlay. Ayes: All Excused: Tanner Nays: None **Motion Carried**

28
29 I. Close Public Hearing Chairman Ralston closed the public hearing at 9:29 p.m.

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31 **IV. Public Input** – Items on or off the Agenda, within the Planning Commission's
32 jurisdiction None

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34 **V. Adjourn** Chairman Ralston adjourned the meeting at 9:30 p.m.

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36 The next regular meeting of the Planning Commission is scheduled for July 9, 2009.

37
38 Respectfully Submitted:

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40 _____
41 Katherine Ross, Secretary

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43
44 _____
45 Christi Flynn, Recording Secretary