

NORTHERN COUNTIES LAND USE COORDINATING BOARD

Minutes

Thursday, June 2, 2011
Chisholm, Minnesota

Call to Order: The meeting was called to order at 9:45 a.m. by Past Chair Commissioner Todd Beckel with the following in attendance. (All actions of the Board were supported unanimously unless otherwise indicated.)

All Member Counties Present:

Commissioner Brian Napstad, Aitkin
Commissioner Fritz Sobanja, Cook
Commissioner Brian McBride, Koochiching
Commissioner Rich Sve, Lake
Commissioner Todd Beckel, Lake of the Woods
Commissioner Jack Swanson, Roseau
Commissioner Steve Raukar, St. Louis

Others Present:

Pat Tammen, Soudan resident
Bob Tammen, Soudan resident
Pat Henderson, Arrowhead Regional Development Commission
Lori A. Dowling, DNR NW Regional Director, Bemidji
Craig Engwall, DNR NE Regional Director, Grand Rapids
Douglas Skrief, NCLUCB Staff

Administrative Actions:

1. Approval of Agenda with the following additions:

- 1) Soil and Water District and Wetland Issues (Comm. Napstad - Local)
- 2) DNR Minerals (Comm. Sve - Local)
- 3) ARDC Communications Forum (Dir. Henderson – Local)
- 4) Land Use - Cell Towers (Comm. McBride - Local)
- 5) Land Asset Pilot Project (Comm. Swanson - State)
- 6) Waters of the United States Guidance (Comm. Sve - Federal)
m. Napstad s. Sve

2. Approval of Minutes: April 7 and April 25, 2011 Meetings

m. McBride s. Raukar

3-4. Financial Report and Bills:

The Treasurer referred to the income and expenditures sheets prepared by the Director which reflect a general account balance of \$106,390.92 and a Land Use Conflict Management balance of \$15,005.28. The total accounts balance, after payment of approved expenses of \$1,068.60, was \$121,396.20.

The Executive Director submitted an invoice for \$1,255.99 for two months of professional services and expense reimbursement.

m. Raukar s. Swanson

Correspondence:

None

Discussion Issues

LOCAL

1. Soil and Water Comm. Napstad reviewed asking the Board's members about ATV use on county roads and numerous related ordinances. He cited recent personal experience of seeing signage in Wisconsin for "ATV – Stay on the Road" warnings to avoid ditch degrading and sedimentation. Aitkin County has been developing an ordinance on use of roads in consideration of the Northwoods Regional ATV Trail. A

representative of the Minnesota Association of Soil and Water Conservation Districts has advanced that SWCDs would like to see ATVs use the shoulder rather than the ditch, sedimentation being one issue. Even those counties outside Aitkin's district may be affected. Type of ATV determines road and ditch use.

Comm. Napstad also recalled discussions at the Board's last meeting with the Joint Powers board in reference to wetland mitigation strategies in which wetlands are mitigated within bank service areas. Aitkin has 15,000 acres being evaluated by mining interests for mitigation due to activity mostly in St. Louis County. Aitkin is asking whether putting mitigation funding into wetland-rich counties without retention or quality issues is as effective as putting the same dollars into areas like the Red River Valley where water retention and flood reduction projects need funding. The Board and the Joint Powers Board might support legislation that allows for wetland mitigation that does not follow current models of mitigation within service areas or adjacent areas if a county is over eighty percent wetland – changing instead to mitigation where it is needed most, bearing in mind the bank service areas are supported by the Army Corps of Engineers. The goal would be to get legislators to agree from an environmental water quality perspective to direct tens of millions of dollars of mining interest funds to places where it will make the most difference. The current budget situation may urge action at this time.

Mr. Engwall asked if the Corps would ever go along. Comm. Beckel noted that as a rule the Corps never gets on board and counties tend to give up. Service districts were added to the mix to start discussion. The Corps has more latitude than the state. He argued for putting the issue forward now. WCA is based on "public value" and not "acre for acre"; it allows for recreational opportunities and wildlife enhancement as well as wetland protection. Comm. Napstad suggested that the Corps would not have gone along with the proposition over the past decade, but getting funds to needed locations is now more relevant. There is a level of support from the DNR and the EQB with its representatives from various agencies. A June 16 meeting of the EQB might be a time to bring up the issue and propose a change to the Corps. Comm. Swanson asked, if there is going to be wetland creation then is the proposal not a small step, adding that multiple benefits would serve more public purpose. For now, policy is acre-for-acre, commented Comm. Napstad, so it makes sense for a mining company to go to where the land is cheapest; the policy would have to go to where the dollar amounts are clear. Ten million dollars to be spent in Aitkin might make significant impacts on counties to the west that need flood damage mitigation. Industry might find it acceptable. BWSR has an acre value now for every county, added Comm. Beckel. To replace in wetland-rich counties does not make sense. BWSR might first see Board and legislative language. Ms. Dowling recalled that discussion has included the proposition of getting Senators to the table with the Corps for leverage. Dollars being spent for wetland mitigation for water quality and habitat should be spent where you get most effective use of the funds, Comm. Napstad reiterated. Comm. Swanson added that the Roseau River Watershed Board would support the proposition as it would stretch their dollars. Comm. Raukar suggested that the region not be limited to areas of the state without wetlands; the Keetac expansion has called attention to a small lake and river system near the mining project that has disturbed flowage and that could be brought back to life with funding of restoration; it is easier to go to Aitkin County than restoring water systems. There might be variance to policy of acre-to-acre, making the proposition more palatable.

Comm. Napstad added that the EQB has discussed the need to reinvent itself; perhaps its members might be able to weigh desired outcomes of public value against current practice. If there were support there, seeing local support of the Board, there might be a policy level statement that funds might better benefit the state as a whole if redirected. Should this, asked the commissioner, be put on the BWSR agenda or should language be put together to jumpstart the legislative process? The Corps is a stumbling block, Comm. Beckel noted, so Federal legislators would need to be brought in. Representation from the Corps would be necessary to answer questions along with legislators from the state and the federal level. Comm. Swanson noted consensus around the table; Rep. Colin Peterson along with Rep. Cravaack might organize a meeting. He suggested BWSR take the next step. Comm. Raukar suggested communication from the Board identifying the issues to be brought up the chain along with an offer to be involved in the discussion to demonstrate local support. An alignment of state interests might bring federal representatives to the table. Northern Minnesota will be supportive. Southern counties may be leery of wetland creation, while at the same time discussion of recreational opportunity can be a positive factor.

Comm. Beckel offered that the Director draft a letter, to wit, that the Joint Powers board and Northern Counties have been working on wetland issues as they relate to public value for some years. Wetlands are appreciated as of importance. Concern is that this is not just a regional issue but a statewide concern. Especially in the context of tight budgets the question must be raised as to whether there can be more effective use of funds. The draft letter may be circulated for comment before the next Board meeting on July 7.

2. Department of Natural Resources Minerals Division Comm. Sve reported that a representative of the Minerals division of the DNR and an attorney recently stopped at a packed meeting of the Lake County Board of Commissioners and spoke to the issue of the sale of mineral leases for mining exploration. Rights to 13,000 acres of mineral rights have been sold in Lake County, mostly on forested land. Privately owned acres are included in blanket leases. Landowners are sometimes not understanding mining rights statutes. The Lake County board suggested excluding privately owned acres from the lease – or at least contacting ahead of time the landowners. Communication with the public can be improved, suggested Mr. Engwall; and yet mineral rights trump surface rights. The DNR cannot carve out parcels if there are state trust fund mineral rights under the surface; there is an obligation to the Trust as well. If something is found on the 40 acres, the land will likely be sold, suggested Comm. Sve, but until that time, the county is seeking an alternative – or at least communication might be better. This may, suggested Comm. Beckel, be a matter of education of the public.

Surface disturbance does need permission of the landowner for entry to the property, commented Comm. Napstad, who added that directional boring can override that concern. He has found landowners offered money for access and, perhaps, development often become willing sellers. He added that mining companies have been as a rule good stewards of the land out of self-interest. Comm. McBride reported that similarly the DNR visited the Koochiching County board and provided a forthright description of the situation, including winter access to exploration points; Voyageurs National Park showed concern as some leases are within three miles of park boundaries. Mr. Engwall noted that these broad leases are only the first steps in the process and that many leases expire unused as leasing of subsurface rights does not necessarily lead to drilling.

3. Arrowhead Regional Development Commission Forum Pat Henderson announced a Broadband Forum to be held from 9 – 11:15 a.m. June 16 at the Carlton Transportation Department in Carlton, MN – one mile down Highway 61 off 35W. Under discussion will be three large ARA broadband projects in the region together with the social and economic aspects of broadband capacity as well as the leveraging of this new capacity serving both governmental units and citizens. Those outside the Arrowhead are welcome to attend.

4. Department of Transportation and Tower Construction Comm. McBride related that last autumn the DOT visited the Koochiching County Board of Directors to announce that it planned to construct 8 400-foot ARMOR towers in the county. There was county and citizen concern because no permissions are required. Recently AT&T proposed a 400-foot cell tower to cover Rainy Lake and, in part, because a Lake County citizen sued to stop construction near the BWCA of a similar tower, the county's planning and zoning refused a variance and the tower was not built. Koochiching County did, however, offer to work with AT&T to find an alternative and that invitation has been accepted by AT&T, showing that industry and government can find solutions outside of court. Voyageurs National Park will be involved as it is against visible towers. An old ranger tower site is a possibility, which the park would support.

Comm. Napstad reported that ARMOR towers were built in Aitkin County that did not conform to ordinances and raised public rancor toward the county when the state located them without permissions. Comm. Beckel worked with DOT to get towers on county land, in part because radio signal power of 800 megahertz will not be required. They are a public safety tower. In Aitkin County they found one-acre parcels of school district land that no longer held schools and paid the districts for the land, said Comm. Napstad; this would mean change of use, commented Comm. Beckel, and is not allowed or payment will go back to the original land owner. Comm. Sobanja told that Cook County has an ARMOR tower going up on the corner of a graveyard property. Also installations near the BWCA are controversial; lodge owners are not in favor of service to the area as it will mean more frustrating work for them. Lake County embraced the system – with towers mostly on county land – and has, through grants, covered most of the cost. Discussion continued on cost of communications systems.

STATE

1. Legislative Update Comm. Napstad reported that the Board of Soil and Water Resources, in the light of a lack of budget agreements, is without firm knowledge of the future. Natural resource block grants may be reduced; WCA pass-through from the DNR may be reduced; there may be a 19 percent general reduction in the budget that will affect staff. The department will reduce in size under either budget. The Aitkin County board will have to reexamine its role as wetland and shore-land enforcer. Shutdown of the state government may impact the ARDC, Ms. Henderson noted, asking if counties will be similarly affected due to loss of grant funds. Mr. Engwall responded that Fiscal Year 2012 contracts for the DNR, even if valid, may not be funded after July 1 without a resolution. Sewer and shore-land block grants may be affected in Lake of the Woods, said Comm. Beckel. Shutdowns have not typically gone beyond a couple

days, added Ms. Dowling. St. Louis County is making plans for layoffs and furloughs; there will be a record shut down with 60 percent of cuts to health and human services, Comm. Raukar added. Opinions differ on the schedule of resolution of the issues and the motivating factors. In the Northeast Region of the DNR a third of positions are unfilled, added Mr. Engwall. Loggers may be sent out anyway, even on state land, Comm. Beckel commented, without enforcers in place.

The recommendations of the Environmental Trust Fund and the LCCMR were for many years routinely approved, but this situation is in flux. Raising license fees is seen negatively as a tax. There is talk of taking millions from the LCCMR fund. Lessard Sams may be similarly targeted. Nothing is off the table.

2. Legacy Funding/ Lessard Sams RFPs are due to Lessard Sams June 6. Mr Engwall reported that there are some multi-million dollar projects that are not land-acquisition driven but restoration and habitat restoration-oriented, commented Mr. Engwall, suggesting that funds are available for the northern part of the state. Conversation, even in the light of acquisition, is needed for joint management of assets, Comm. Beckel responded. Mr. Engwall explained that the St. Louis River Estuary clean up may require mitigation and improvement; this is the type of project that does not demand acquisition – admittedly a priority of the Lessard-Sams Council to date – and can use a mix of funding sources.

Comm. Sve pointed out from the Board's informational packet that a bill has been introduced and amended to place a moratorium on the acquisition of land outside the 7-county metro area, amended to a period of one year, while state school trust land sales would not be included in the moratorium.

3. DNR Update Mr. Engwall noted as a local example of budget-related developments that there was \$3.5 million for planning for the Lake Vermilion park that has now been pulled. The DNR has now been designated the Local Unit of Government for banking for mines, Comm. Beckel added. Mr. Engwall noted very good communication within the agency during the new administration. A mixture of retirements and loss of trained personnel to the private sector have left positions open that are difficult to fill, especially with educated quality people. There will be changes to the department, added Ms. Dowling. In the overall budget, 18 percent is now realized from general funds while fees have covered most reductions. There is a DNR initiative to encourage people to buy more than one fishing license as a fundraiser.

4. PILT The legislative situation with PILT remains in flux. A letter to be formulated to describe the situation was put on hold until some resolution of the situation is at hand. Ms. Dowling handed out a PILT payment schedule from the state DNR broken down by county. Payments range from \$.87 to \$267 an acre, added Comm. Beckel, for which the state is obligated to pay taxes as a landowner. Protection of resources in recent years has been reached predominantly through acquisition by various entities.

5. Land Asset Pilot Project of Roseau County and the DNR Comm. Swanson reviewed the project in which two willing partners, the county and the DNR, agreed that the process of land asset management was too cumbersome and that a gathering of information to bring to the legislature was timely. A public hearing in St. Paul the previous week created a problem for the process. An individual owning land next to county land that would become DNR land has objected. He appeared before the Roseau County Board and got neighbors to complain and send emails to the Land Exchange board. The initiative may fail as a result because of unknown consequences of a change in ownership. The message to be brought to the Legislature may, as a result, be that the DNR has done everything possible to be a willing partner and that now the process might be derailed by a private citizen. Should one person afraid of consequences be able to stop a quarter of a million dollar sale, and later sales, that could result in an increased levy? The Land Exchange Board may approve the exchange anyway. The county board was fully in support until protest was raised.

FEDERAL

1. Waters of the United States Comm Sve reported that NACo sent notice that on June 3 the EPA will hold a telephone conference on Waters of the United States to be followed by a comment period until July 1. He reviewed the Solid Waste Agency of Northern Cook County and the Rapanos Supreme Court cases. A 39-page guidance on the issue leverages off Justice Kennedy's opinion. Congress's intention of the Clean Water Act did not clearly define the extent of "tributaries" to be covered; the Corps and the EPA interpret the opinion to include tributaries that have a significant nexus to navigable waters. This would be a means to establish the intentions of the Oberstar bill (Clean Water Restoration Act) to include all waters, including mudflats and ditches and those linked underground or chemically. Comm. Sve plans to write a letter after the Conference, which he offered to share. Congress can strip an agency of management through regulation. All permitting might devolve to federal agencies.

NCLUCB

1. Next meetings of NCLUCB The next meeting will be held on July 7 in Northome. The Board will meet with the Consolidated Conservation Natural Resources Joint Powers Board on July 25 in Bemidji

at the government center. No August meeting will be held. The September 1 meeting will be held in Chisholm. Mr. Engwall will try to arrange for Comm. Landwehr to attend the July 25 meeting.

Adjournment at 12:00 p.m.
m. Sve s. McBride

Next meeting July 7, 2011, 9:30 a.m. Kootasca Senior Center, Northome, Minnesota

Respectfully submitted by Douglas Skrief, Administrator