

NORTHERN COUNTIES LAND USE COORDINATING BOARD
Minutes
Thursday, January 8, 2009
Iron Range Resource Center, Chisholm, MN

Call to Order: The meeting was called to order at 9:35 a.m. by Chairman Fink 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 Jim Johnson, Cook
Commissioner Charles Lepper, Koochiching
Commissioner Wade Pavleck, Koochiching
Commissioner Rich Sve, Lake
Commissioner Todd Beckel, Lake of the Woods
Commissioner Skip Swanson, Pennington
Commissioner Jack Swanson, Roseau
Commissioner Dennis Fink, St. Louis
Commissioner Steve Raukar, St. Louis

Others Present:

Craig Engwall, Department of Natural Resources
Robert Krepps, St. Louis County Land Department
Les Lemm, Board of Water and Soil Resources
Douglas Skrief, NCLUCB Staff

Administrative Actions

1. Election of Officers (all on unanimous vote)

Chair: Dennis Fink nominated by Brian Napstad; motion to close nominations and affirm on a unanimous ballot m. Jensen s. J. Swanson

Vice Chair: Brian Napstad nominated by Todd Beckel; motion to close nominations and affirm on a unanimous ballot m. Jensen s. Raukar

Secretary/Treasurer: Steve Raukar nominated by Todd Beckel; motion to close nominations and affirm on a unanimous ballot m. Napstad s. Beckel

2. Approval of Minutes: December 4, 2008 meeting

m. J. Swanson s. Napstad

3-4. Financial Report and Bills:

The outgoing Treasurer reported a general account balance of \$72,015.66 and a Land Use Conflict Management balance of \$15,005.28. Total accounts balance, after payment of expenses: \$87,020.94.

The Executive Director submitted an invoice for \$960.08 for one month of professional services and expenses reimbursement as well as a bill for reimbursement of \$90.47 for a parting gift for Comm. Larson.

m. Napstad s. Beckel

5. Invoicing for Dues for 2009

The Director noted that invoices would be sent in January for counties' 2009 dues, requesting an installment of half the annual dues. The Board asked that counties be thanked for budgeting the full amount and that mention be made that the Board will be able to fulfill its obligations in 2009 after billing only one-half of the annual dues amount.

Correspondence

1. The Chair reported that a letter regarding the lack of appointments of northern Minnesota residents or elected officials to the Lessard Outdoor Heritage Council was sent to the Chair of the Council in care of Secretary of State Mark Ritchie. A number of parties were copied, including Jim Gelbmann, Deputy Secretary of State. No reply had been received to date. Comm. Beckel reported receiving a response, to his similar letter, from the secretary of the state's appointing committee recommending contacting state legislators to voice local opinion. Comm Johnson noted that Cook County is sending its own letter and recommended other counties do likewise. Comm. Beckel suggested including a date for an expected reply in such letters. Round table meetings were to be held January 9 and 10 to discuss use of the fund. The Chair reported that RDC representatives would be attending the next Board meeting to report their interest in the funds and to ask for support. Mr. Krepps reported that the Land Commissioners Association would have representation at the current state meetings. Comm. Raukar suggested an opinion piece be distributed from the Board to increase regional awareness of the council's activities, being that the northern part of the state supported the funding of the council. Northwestern Minnesota voted against; there may be a question of whether there will be funds appropriated to those counties. Mr. Engwall explained that the council will act much like LCCMR in that its recommendations will likely be followed by the legislature and the governor, who technically and legally give approval. The Chair recalled that Statewide Conservation Plan Coordinator Jean Coleman told the Board in January that the plan will drive the agenda of the LCCMR in the future and will likely be program, not project, specific based on that plan. Comm. Johnson recommended informing legislators of the need for northern representation on the unnamed Parks and Trails and Arts Committees. The governor may encourage funds be used towards EPA or the Clean Water Legacy Act not funded for some time, for example inventorying septic systems, suggested the Chair. Comm. J, Swanson encouraged pursuing future seats on the council as they again become available.

2. The Chair announced that he had received and responded to an invitation from DNR Deputy Commissioner Laurie Martinson to designate representatives to the Forests for the Future Program. The first of about four meetings in 2009 is being scheduled for late January or early February. Previous participation represented a large county, St. Louis, and a small county, Koochiching. Mr. Engwall noted interest of forest counties in the current economy. Comms. Fink and Pavleck were appointed; the Chair will notify Dep. Comm. Martinson.

3. Resolution on Proposed Wetland Conservation Rule was sent. Comm. Beckel thanked Comms. Pavleck and Napstad on their testifying for the elimination of language demanding the reporting of exempt activities in the new draft wetland conservation rule. Comm. Napstad reported that after the last rulemaking meeting and the resolution against reporting exemptions passed by the NCLCUB, the issue was taken up by the Rural Counties Caucus at the Duluth AMC meeting and the Environmental Policy Committee. By the time of the final wetland meeting before the full board meeting the issue had come to the table, an example of an organization in place with a strong interest being able to influence decision-making. Comm. Pavleck expressed appreciation for the openness of BWSR to change, noting that the process now enters the public comment phase and that NCLUCB needs to be part of that process. The Chair recommended preparing comments, submitting them to the Director, so as to prepare a resolution to be approved in February.

4. Marshall County's response to an invitation to join NCLUCB included appreciation while declining to join. The Director noted that letters of invitation were sent to individual commissioners in eleven northern Minnesota counties.

Discussion Issues

LOCAL

1. Bovine TB and wildlife management: Comm. J. Swanson reported that, unusually, the Minnesota Board of Animal Health and the Minnesota Department of Agriculture have asked Roseau County to form an advisory or stakeholders meeting concerning Bovine TB, to a large extent because of the distance between Roseau County and St. Paul. The DNR hopes to be involved to some degree. The advisory committee would include, among others, livestock producers, deer hunters, extension officers, business people, and local elected officials. They are asking for recommendations and some capacity to serve as a liaison between the state and federal agencies. Recommendations may be that the DNR create some habitat improvement areas on state land and that there be some resolution on state and federal plans for the handling of timber wolf issues. Comm. Swanson said he wished to note to the Board the improved relations between the state agencies and the county, which the county hopes to build on. In response to questions, Comm. Swanson reported that the disease, which is not harmful to people if the meat is cooked properly, is being contained to the presently affected areas. There are no positive tests in deer born after 2005.

2. Comm. Fink reported that in the first half of 2009 St. Louis County Board will be seeing the land use plan, in development for several years, for the first 1000 foot area around Lake Vermilion. The banking institution is looking at nonconformity as a significant issue; if the land is on a nonconforming lot, and a building is lost, can the building be rebuilt? Solutions may include letters of commitment that the buildings would be replaceable or language change around “nonconformity”. Another issue is the disparity of dimensions between the first and second tier of land surrounding the lake; a question arises as to why second tier dimensions must be double the first tier.

STATE

1. Northeast MN Wetland Banking Cooperative Work Plan Contract The Chair reported that a draft contract with Ron Harnack has been drawn but is in need of significant work on issues of the language of what the contractor would actually do, what the completed deliverables would include, and at what cost. The contract should be ready for action by the February meeting.

2. Comm. Beckel reported distributing the Governor’s plan for balancing the current state budget as a point of information.

3. AMC. First District Commissioners will receive an email from Jim Mulder of the Association of Minnesota Counties forwarded by the Chair concerning the invitation to counties to discuss with the governor planning around outcomes and structural issues as opposed to planning around funding alone. Also, this year the mandate for counties to publish notices in newspapers may come up for review due to changes in communications technology.

Comm. Pavleck asked what AMC is doing to reduce its own budget. The Chair reported a just under four percent increase determined by the need for increased lobbying coverage in 2009. Comm. Raukar added that other funding of other professional associations had been held flat or rolled back. Comm. Johnson said Cook County had not discussed it but will probably pay the AMC invoice. Aitkin County, said Comm. Napstad, which will pay the invoice, cannot otherwise afford lobbyists. Pennington paid the increase, noted Comm. Jensen. Roseau needs the association to continue increasing its visibility, said Comm. J. Swanson. Comm. Beckel noted the small amount Lake of the Woods pays, while noting that a hold was instituted on all raises countywide. From Pennington’s perspective, Comm. Skip Swanson noted AMC’s influence on increasing communication between the governor and the legislature and supported the ability of AMC to try new ideas for a year. Comm Sve reported that Lake County had tabled the issue, waiting to see other counties’ opinions and to weigh repercussions of not supporting the increase. Koochiching moved it forward on a split vote, reported Comm. Pavleck, adding the county will watch for a year. The Chair recalled that he had voted against the increase, noting that there is statewide pressure on AMC to increase its influence.

4. Conflict Resolution and DNR Management of Public Land Mr. Engwall reported on Mr. Carroll’s behalf an interest in discussing, when conflicts cannot be avoided, whether a formal conflict resolution management strategy might be employed. In response to Comm. Jensen, Mr. Engwall reported that meetings on con-con ditches have been held and that a meeting to be held the day following the present meeting would address the instrument to carry out analyses. The DNR is exploring mechanisms to explore the issues collectively, with the NCLUCB Conflict Resolution Management Process perhaps being one tool.

PRESENTATION Update on WCA Rule Making, by Les Lemm, BWSR Wetland Conservation Act Coordinator. Mr. Lemm introduced himself as a native of Baudette and a resident of Lake of the Woods County who has worked for BWSR for five years. He then reviewed the WCA Rulemaking background, recalling 2007 statutory amendments, 2007 exempt rulemaking, including how the state interacts with federal agencies, that expires two years after adoption, making for the August 5, 2009, deadline for getting a new rule in place. The rulemaking process, including a schedule starting in August of 2007, was reviewed, as were goals. Consistency, simplification, and clarity were major goals, along with tangible results and improved accountability. Consistency with the purpose of the WCA was paramount. The workload of Local Governmental Units was considered. Meetings were held with LGU staff. Comms. Pavleck and Beckel were thanked for work on the Permanent Rule Advisory committee. The Federal Mitigation Rule, a joint rule between the Corps of Engineers and the EPA, was released during the state rulemaking process, leading to consideration of replacement within a watershed that has the most benefit. The rule order and format have been considerably altered. Clarified were administrative procedures. Replacement ratios were addressed, as were actions eligible for credit, replacement wetland monitoring and wetland planning. The distinction between no-loss and exempt from replacement was defined, eliminating bad data collection when non-impacting activities are inappropriately called exemptions. Exemptions are

defined as wetland impacts that are exempt from replacement. Functional replacement becomes the minimum standard, while it will be easier to get a 1:1 ratio with a preference for banking rather than on-site replacement. The new rule converts to a single credit system, which may create opportunities for northern Minnesota. Changes to buffer replacement standards are aimed at Northeast Minnesota where there may not be buffers. And LGUs can, with greater flexibility, waive financial assurance, for example for small northern farmers to be determined by the individual LGU. In terms of replacement wetland monitoring, more details have been provided to assist LGUs in their reporting responsibilities, and banking goals can be measured against a standard. A greater focus on strategic selection of replacement sites has been tied to sustainability, with a focus on function and value.

The draft rule has been reviewed and approved by the Board. A draft will be sent to the Governor's office in January. Notice will be published and a request for comments made in February. Public hearings are likely, especially with interest by environmental groups on exemption from reporting. After submission and approval the amended rule should be published in August.

Mr. Lemm recommended submission of formal comments, including, notably, support for retaining content of the rule. He distributed a handout "Exemptions: Application, Implementation, Estimates, and Reporting", summarizing statutory language surrounding exemptions and five options for reporting. He also provided a summary of significant revisions to the WCA Permanent Rulemaking.

Comments: Comm. Napstad commented that providing individual comments will be important. He inquired about the State General Permit, an agreement between the Corps and BWSR that allows BWSR to oversee impact areas under three acres. Mr. Lemm distinguished among permits, noting that there is an agreement allowing for states to issue certain smaller project permits, but that the Corps can exercise authority; a general permit between BWSR and the Corps is not in effect, to his knowledge. The state program must be up to federal standards. The Chair noted that the issue of general permits has been discussed at NACo; Minnesota has mutual agreement for 402 and not 404; the Corps is arguing that smaller projects involve "navigable water" and, in addition is arguing that there are only "waters of the United States", allowing Corps involvement.

Mr. Engwall asked if a county could put an easement on tax-forfeited land. Mr. Lemm, noting that the situation is not easy, noted that the state and a county may not be interested in a property due to restrictions placed on it; part of the requirement for giving credit is establishing a threat, such as the property being near sale or logged without prospect of it coming back to existing conditions.

Comm. Pavleck noted that there will likely be a comment period. He requested that the Chair put together a draft statement from the Board – working with Comm. Beckel rather than Comm. Napstad who may have a conflict of interest – that might be used as a guide by counties. The Chair noted that Comm. Napstad sits on the rule-making panel as a representative of counties, not an individual. The Chair asked for an outline from individual counties regarding particular areas of interest.

The Chair noted an area of interest to him is that the "guide" for citizen use in defense of activities costs \$8.95, and may not protect against Corps decisions. He also noted that another report was required by the legislature after 2003. Mr. Lemm responded that the legislature removed the report requirement as of 2004; now that there is staff available, however, BWSR has begun on their own to write that report, to come out this summer. The Chair then distinguished between local input from "those working on the ground", who may have comments about what they do, and elected officials responsible for policy decisions. The Chair again encouraged counties to supply input on the issue. Comm. Johnson added that he was convinced that consistency on exemptions would maintain confidence in the agency. Exemptions were key to Koochiching County's support, recalled Comm. Pavleck.

Comm. Napstad inquired over the ability of individuals to supply a quality exemption report. Mr. Lemm recalled that part of the purpose of exemptions was to alleviate the need for inexpert individual landowners from having to make difficult functional determinations and that functions of wetlands are defined in statute.

Comm. Beckel recalled that after initial rulemaking meetings, little was said about functions and values, an interest of special interests. Mr. Lemm noted that functions are defined in the rule, forming the basis of public value; areas of value include storm-water detention, commercial use and wildlife habitat.

FEDERAL

1) Heart of the Continent Partnership An HOCP meeting scheduled for January 15 and 16 in International Falls may be attended by Koochiching County commissioners. The potential for HOCP to include policy initiatives remains a concern of the Board. The Chair encouraged a written report.

2) Mr. Krepps reported that the law firm Faegre and Benson had approached the Forest Management Association requesting planning documents for the Quetico Superior Ecosystem, The request has been extended to all of St. Louis County and will probably include Koochiching and Aitkin Counties.

3) Superior National Forest Federal Hardrock Mineral Prospect Permits. A summary of a public scoping document from the U.S. Department of Agriculture's Forest Service was distributed. It will guide the development of the environmental impact statement.

4) Reinstatement of Protections for the Gray Wolf in the Western Great Lakes and Northern Rocky Mountains in Compliance with Court Orders. A summary from the U.S. Interior Department's Fish and Wildlife Service was distributed. The wolf will be treated as "threatened" in Minnesota, leading to a wider range of management options in counties such as Lake of the Woods and Roseau.

NCLUCB

1) NCLUCB Internet presence. The Director distributed a planning document and a sample fee schedule regarding the development of a Board website. He welcomed suggestions and options.

Meeting adjourned at 12:50 p.m.

Next Meeting Date and Location

December meeting: February 12, 2008, 9:30 a.m. Kootasca Senior Center, Northome, MN.

Respectfully submitted by Douglas Skrief, Administrator and Exec. Dir.