

NORTHERN COUNTIES LAND USE COORDINATING BOARD
Minutes
Thursday, April 2, 2009
Kootasca Senior Center, Northome, MN

Call to Order: The meeting was called to order at 9:30 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 Robert Fenwick, Cook
Commissioner Brian McBride, Koochiching
Commissioner Rich Sve, Lake
Commissioner Todd Beckel, Lake of the Woods
Commissioner Don Jensen, Pennington
Commissioner Skip Swanson, Pennington
Commissioner Jack Swanson, Roseau
Commissioner Dennis Fink, St. Louis

Others Present:

Craig Engwall, Department of Natural Resources
Richard Lehtinen, Koochiching County Environmental Services
Pat Henderson, Arrowhead Regional Development Commission, Duluth
Douglas Skrief, NCLUCB Staff

Introductions

Administrative Actions

1. Approval of the agenda with the following additions:

- 1) State: Senate Bill SF 913 (Sve)
- 2) State: SFIA (McBride)
- 3) Federal: Federal Indian Policy/NACo (Fink)
m. Beckel s. Jensen

2. Approval of Minutes: February 12, 2009 meeting

m. J. Swanson s. Sve

The Chair noted that all members are now receiving draft minutes for comment.

3-4. Financial Report and Bills:

The Chair, in absence of the Treasurer, reported a general account balance of \$90,045.04, and a Land Use Conflict Management balance of \$15,005.28. Total accounts balance, after payment of approved expenses: \$105,050.32. Comm. Jensen inquired about keeping a conflict management balance; a separate account will be maintained until the next full audit of the Board.

m. Beckel s. Fenwick

The Executive Director submitted an invoice for \$993.87 for one month of professional services and expense reimbursement. An estimated \$55.00 was submitted for the day's meeting room/refreshments.

m. Jensen s. J. Swanson

Correspondence

1. The Chair referred to a letter from the Roseau River Watershed District to be discussed under State business (number 5). He also referred to a letter from Craig Hella to State Senator Saxhaug regarding SFIA under state business (number 7).

The Chair moved from lower on the agenda the design and launch of a NCLUCB Internet site. Comm. Swanson noted user-friendliness of the draft site. The Chair spoke favorably of the content of the home page.

The Chair recalled previous Board discussion on the mention of NCLUCB on the Internet encyclopedia Wikipedia under the heading "Wise Use" and the subheading "Fringe Groups". He

distributed a copy of the relevant paragraphs. An email was sent March 30 to Wikipedia to reconsider the identified content, stating that NCLUCB is a joint powers board “to provide leadership and support on regional issues of comprehensive land use and resource management” and that he is currently chair, and, beyond that, that the Board is not, as a governmental body, tied to either the environmental movement or the Wise Use movement. A request was made to remove the relevant language or redefine the Board in another article. A 30-60 day turn around on the request is expected. Comm. Fenwick noted the low credibility, if not deficit credibility, of the Wikipedia site. Also noted by the Director is the space given NCLUCB on the website of Friends of the Cloquet Valley, which the Chair characterized as in error as it referred to him.

Comm. Swanson inquired after links from other sites to the NCLUCB site. The Director explained that such links need to be requested of other agencies and institutions. Suggested requests included the Association of Minnesota Counties, National Association of Counties and the Department of Natural Resources.

Discussion Issues

LOCAL

1. Lessard Outdoor Heritage Council: The Director reported that Les Bensch of the LOHC has been invited to attend a meeting of the Board. The funding of acquisition of new land by the Council remains of interest. The acquisition of 180,000 acres in northern Minnesota is on a Council list of proposed funding projects for the first year of the LOHC funding without promise for the second year, according to Mr. Engwall, who added that Rep. Phyllis Kahn, Minneapolis, is pulling this proposal into her committee to address perceived imbalance in out-state/metro funding.

2. Wetland Conservation Rule Update: The rules are now out for comment. Comm. Beckel reported that legislation is proposed to put a two-year suspension on rules implementation due to budget constraints. As proposed reporting of wetland exemptions was stricken from the rules, no concerns for the Board exist at present. Public comment may prompt changes. Further comment from the Board may await that process.

3. Shoreland Rules Update: Discussion will await the return of Comms. Napstad and Pavleck.

4. Potential Hold on Environmental Rule Making: Discussed under Number 2 above.

5. State PILT Payments: The Governor has suggested a twenty percent decrease in Payment In Lieu of Taxes, reported Comm. Beckel, adding that until this decision is solidified comment would be reactionary. Selling of state land at this time, as some counties have suggested, is difficult; if PILT, for example, to St. Louis County is reduced \$404,000, to sell land to compensate for the reduction might not be possible, but the state might return to the county land valued at an equivalent amount and which the county could sell or manage.

Roseau County, added Comm. J. Swanson, testified at a committee hearing on a bill proposed by Rep. Dave Olin to sell 2,300 acres of con-con land in Roseau County, that if there is going to be a reduction in PILT then let counties sell con-con land for immediate income generation and then realize greater ongoing revenue as con-con lands garner about 70 cents an acre versus \$4-\$8 dollars from privately held land. Comm. Jensen noted that Pennington has no con-con land and receives only \$3,500 in PILT.

To bring the Department of Natural Resources into a process of giving counties state land to compensate for a loss in PILT would force the state to prioritize its land use, added Comm. Beckel. The DNR is no longer controlling the PILT payment as it is disbursed as a line-item distribution, noted the Chair. Counties already have the option of selling tax-forfeited land. Counties realize over one dollar on county-managed land as opposed to \$.57 for state-managed land. Those proposing a general reduction in PILT may not understand its intricacies. Mr. Engwall recalled several years ago when to make up a general fund budget deficit, \$6.44 million of land was to be sold. While some was sold, the DNR is still willing to sell \$4 million worth of land. The DNR can only auction trust fund lands, but the income goes to the courts and the school trust fund by law. Legislators may well recommend delay of land sales until better economic conditions exist.

In response to Comm. Jensen, Comm. Beckel reviewed the question of having to sell \$4 million worth of land to make up for the PILT reductions: the cost of metro-area land is much higher than rural land, so that it would take many more acres of rural land to equal a sale in the metro. Rural counties are not able to get solid footing without the issue being brought back to the county level. Lake of the Woods now depends on PILT for 80 percent of its budget. To take 20 percent of that without selling land threatens the existence of the county. Comm. J. Swanson argued for a plan for sales over a five-to-ten year period. Mr. Engwall reviewed how the DNR was selling a mixture of properties and buildings. Sales are best done in a strategic manner. A list was created. There were buyers.

The Chair noted that some forty-seven Minnesota counties have less than 1 percent public land, so if the Governor cuts local aid and 20 percent of PILT, this may be selective reduction. St. Louis County, with 650,000 acres managed by the DNR, may get disproportionately impacted. Comm. Beckel responded that cheaper alternatives are attractive to much of the state, adding that he would like to manage land not separately from the DNR. Comm. J. Swanson pointed to a related pilot project in Roseau; he propounded a shared local and DNR management model that would include local input. Comm. Fenwick stated that he would turn all state and federal properties into no-service areas. Transportation and emergency services would be sent to those places that pay taxes.

Lake County has 337,000 state acres; Roseau, 924; Cook, 144,000; Pennington, 7,800; Koochiching, 1,379,000; St. Louis, 1,470,000; Lake of the Woods, 500,000. These include forfeited land that generates more than \$1 an acre. Forestry lands generate \$.57 per acre. WMA fluctuates. While decision making between the counties and the DNR is positive, The Department of Revenue is now involved. Comm. Beckel asked how the state plans to pay PILT on land it wishes to acquire, and there is now a state amendment that might fund continued acquisition for 25 years. The impact on the state in terms of PILT may become evident only a year after land is acquired. The DNR is interested in some specific lands, said Comm. J. Swanson; where is the general interest, he asked. The drivers behind the movement to acquire more land are various, Mr. Engwall responded, noting that metro area counties with little public land are interested in, for example, nearby hunting areas or areas “up north”. The DNR may look at land sale and acquisition strategically. Legislators and leadership are leaning toward acquisition.

Comm. Beckel has approached AMC about PILT. The numbers of counties with 100,000 acres is relatively small, and the issue is not prioritized. Mr. Engwall reviewed scenarios of funding reductions at DNR. Comm. J. Swanson inquired about the reasons for out-state acquisition when it might, from a northern perspective, seem more of a priority to acquire metro area land. The LOHC is looking to out-state lands to ensure fishing, hunting and water quality, Comm. Beckel explained, while some metro area legislators have now been introducing legislation to bring spending on land to the metro area. Acquisition of metro land would demand increased PILT payments, at metro-area land value levels, at 3/4 of one percent of the assessed value.

Comm. Fenwick raised the issue of state land ownership and jurisdiction, making a parallel with a standard set at the federal level in which the government is both landowner and ruler – tenant and holder of jurisdiction. Can the state own the land and do what it wants with the land, he asked. To a large extent, yes, replied Mr. Engwall. The U.S. Supreme Court ruled that the federal government has both tenancy and jurisdiction, Comm. Fenwick continued, adding that the state is acting similarly; it might be argued that the state is not acting as a tenant but as having governance, and, in not paying an appropriate amount of property tax, it is acting as the governance of the county. PILT is now being treated as a line-item entitlement supported by statute. To argue entitlement is not the counties’ call. Federal payments may disappear. An exception in the state, the Chair proposed, was in tax-forfeited land when the state guaranteed payment. Taconite interests have been held harmless and may be collected differently.

6. Streamlining and simplifying Permitting Processes Comm. J. Swanson reviewed a Roseau River Watershed District Board resolution addressing increases in costs of public works projects due to engineering fees and that those fees are increased from 30 to 50 percent because of permitting involving multiple state and federal agencies and, therefore, the federal and state governments should take steps to streamline and simplify the permitting process within its agencies. Project work teams can independently redline a project and send it back to the engineering process. A hope is that one entity be created to rule in favor or not. The opposition is not to engineering per se but that re-engineered projects might be turned down by a subsequent agency ruling at great expense of time and money. The request is for NACo to carry the resolution. The Chair asked for a motion to support the one-stop shopping concept forwarded by the Roseau River Board.

m. J. Swanson s. Jensen

In discussion, Comm. J. Swanson noted that the argument has been made to agencies in work team settings. The Chair asked if there is not already the capacity to form Technical Advisory Committees (TACs). In St. Louis County agencies gather and discuss projects and if one objects the tendency is not to grant a permit. Comm. Jensen, pointing to the length of the process, noted that the Minnesota Department of Transportation is in favor. Mr. Lehtinen suggested that such support comes from those who have no jurisdiction over a project; Koochiching would not support one decision maker in, for example, a wetland issue. Standards differ between the Corps of Engineers and the Board of Water & Soil Resources, and the difference should not be eliminated because the Corps will not relinquish its ultimate authority. Agencies try to work together on TACs, and the object is to get agencies, with independent judgments, to go along rather than assigning one decision maker. In St. Louis County, the Chair related, the planning commission

or the County Board has taken the side of a particular client and in applying wetland rules the planning commission took an opposite side to the group in detriment to the process; the process may work when there is no one in opposition. It would be difficult to get the Corps to sign off at the end of the day. Comm. J. Swanson alluded to a House File that relates to the issue on the funding side due to increased costs. Comm. Jensen added that it is part of the Board's mission to get various interests to come to the table.

The Chair noted that a letter would be created as a cover to the Roseau River Watershed Board resolution.

6a. Watershed Levy Authority: Comm. Jensen referred to suggested legislation that counties have budget approval over Watershed Boards. In the Red Lake Watershed District six counties would have to decide on fairness of funding. Could one county with little land in the District, such as Koochiching, have veto authority, he asked. It would be very difficult to resolve such budget decision-making and treat everyone equally. AMC reconfirmed its general position that elected officials have levy authority, explained Comm. Fenwick, who argued that there is not an easy solution; the alternative to six counties making a decision is having a body with no authority, akin to the Metropolitan Council, make an easy decision. Comm. Beckel asked if by giving a watershed board taxing authority then BWSR would have taxing authority because its Board is elected. Comm. Fenwick argued that a watershed board not be immune from cutting back in hard economic times. Comm. Beckel recalled that the issue arose when a county in the Red River Basin, that is not part of the watershed, wanted to be in the basin to collect the taxes, leading to the Lanning Bill, now dead. The Chair asked whether county committees would have proportional representation and how payments would be determined. Comm. J. Swanson voiced concern about budget approval in regards to Kittson and Roseau Counties. If Kittson has denial authority, they will deny any proposal to send water to them; as any downstream area does not want water. While AMC has supported elected officials having levy authority, they do not support soil and water districts having levy authority. Related correspondence from Linda Ronbeck will be on the next Board agenda.

7. Land Use Reform Bill S.F. 913; H.F. 1035: Comm. Sve reported that while Analee Garletz of the AMC has communicated that this bill authored in the State Senate by Thomas Bakk is likely to be tabled this session, Lake County's county coordinator/zoning administrator had expressed concern over provisions that unincorporated areas with one residential unit per 40 acres may not be developed with residential density greater than one unit per 40 acres or not increased if the density is greater, with exceptions. A city might be able to expand their development area beyond two miles and then reduce development beyond – as the bill is about reduction in green house gases and the planning for preservation of cultural heritage.

The companion House bill would address unincorporated areas, eliminating townships and cities from being impacted. County boards act as county boards to unincorporated townships. Comm. Fenwick noted that this might be a metro/rural issue as some counties don't have planning and zoning boards, so that a metro author may write a bill without knowledge of outlying county administration. The Chair noted that in St. Louis County the largest zoning area is 34 acres as easements have to be put near property lines to allow for transportation. Comm. Sve, added the exemptions in the bill of platted areas as of August 1, 2009, include those parcels classified as noncommercial seasonal residential recreational property for tax purposes. A county, according to the bill, must update its comprehensive plan with, among other things, evaluation of public infrastructure of serving a development and evaluation of transportation-related carbon emissions. Comm. Fenwick argued that this is a reduction of the rights of those who have kept land in the family for generations for the purpose of breaking it up eventually and developing it to make their living. The Board, he added, should address the issue on the grounds of personal property rights and the ability of counties to do their own planning and zoning, nor should cities be able to take development rights away from counties. Mr. Lehtinen noted that counties have traditionally had this authority in Minnesota, while that authority has been chipped away; such rules would not work.

Comm. Sve concluded that correspondence from Analee Garletz noted that the bill resides in Sen. Bakk's tax committee. If cities and counties cannot reach an agreement on the issues, the Senator is unwilling to release the bill. He would not be supportive of amendments. The Chair of the House Local Government Committee will not hear it if there are problems expressed. The House Property Committee is scheduled to hear the TIF portion of the bill this week. Comm. Fenwick suggested that AMC discover a rift between townships, counties and cities. We want, he said, to work on things with a mutual interest, but it is in counties' interest in this case to disagree. Counties can send letters of inquiry to Senator Bakk, noted Comm. Fenwick. St. Louis County will ask for information. The item will be on the next agenda. The letter from Ms. Garletz will be forwarded.

Introduction: Pat Henderson, Executive Director of the Arrowhead Regional Development Commission in Duluth introduced herself to the Board as successor to John Chell. Leon Heath had hoped to attend.

8. Sustainable Forest Incentive Act: Comm. McBride related that after the proposal by the Governor to cap SFIA payments to a landowner at \$100,000, the Koochiching County Board was approached by Craig Halla, the regional manager for Forest Capital Partners. The long-term effect on northern Minnesota could be significant as Forest Capital holds 276,000 acres in the SFIA program. If benefits from the program are cut Forest Capital might be forced to consider taking the land out of the program and selling or leasing the land to the highest bidder, perhaps to environmental groups, with potential results such as gating and restricted use. Some 270 recreational leases in St. Louis, Koochiching and Itasca Counties could end. This could fracture land and end public use.

Mr. Engwall reviewed the SFIA program. Those enrolled, individuals or large landowners, receive a credit of over \$7 an acre on forested land. The large holders are Forest Capital, Blandin, and Potlatch non-leased land. The proposal would cap payments at \$100,000, which for Forest Capital would mean a reduction of \$2 million, for Blandin about \$1.5 million. The program demands that holdings of over 1,000 acres be kept open to public use for recreation; there must be a management plan and a four-year enrollment that can be extended in four-year increments. Some think that if property owners avail themselves of a working forest easement as well as SFIA it might be seen as double-dipping. There are bills proposed that would end this apparent conflict.

A letter from Forest Capital that Comm. McBride shared with the Chair noted that there was a conservation easement on 51,000 acres and that public access must be maintained and a management plan kept. As for the 76,000 acres they are looking to acquire with the same requirements and the 188,000 acres being considered by the LOHC. The Chair recalled the issue of receiving payments from both programs came up in the planning for the Forests for the Future program and was aggressively debated. Mr. Engwall recalled that things were headed toward non-renewal of SFIA if the land were entered into Forests for the Future. Mr. Halla, he suggested, might be concerned that the appraisal of the Forest Capital lands might have been affected by the lands having been enrolled in SFIA; a revenue stream is expected, but the appraisal might not have factored in the value of public access. SFIA does not have a permanent effect on land use, unlike permanent conservation easements. In the easement, development rights and public access are purchased in perpetuity. Mr. Engwall asked to bring up later on the agenda the establishment of value on easement lands, in part as it relates to townships. Comm. Beckel asked about value as it relates to taxable value.

Comm. McBride noted that Koochiching County was bringing this to the Board's attention. Comm. Beckel responded that while concerned about PILT, it may be difficult to support a private group. Comm. Fenwick asked if it is appropriate to respond to the state about potential effects on Koochiching County. That is a complex picture, responded Mr. Engwall, as there is some opposition in and of itself to the SFIA program. Koochiching County will write a letter on the effects on 206,000 acres, reported Comm. McBride. Even if all the land in St. Louis County went up for sale there is no guarantee they would be able to sell it over the next couple of years, noted the Chair. There may be reason to have to discuss in two years the support of SFIA and the lifting of caps. The Governor may be looking at this as temporary. High public ownership is already an issue. Comm. Beckel said that perhaps all that can be offered is support of Koochiching County concerns. A large land management issue is part of the larger picture regarding access, added Mr. Engwall. Comm. Fenwick pointed to personal property rights and that the companies should be able to do what they wish with their land; there may be cross purposes.

FEDERAL

1. Land Bill and effect on PILT: The Chair reviewed that Congress approved full payment of federal PILT for four years and that the funding was moved from an appropriation in the Department of the Interior to a line-item in the federal budget. As line items are being adjusted or lost, NACo is determining response. Comm. Johnson is on the NACo Public Lands Committee. He will report on the matter.

2. Transfer of taxable land to trust status: The Chair, reviewing protests by Fond du Lac Reservation representatives about not being included in early discussion by St. Louis County on fee to trust land issues. The Chair attended meetings in Washington, D.C., in the previous week to learn about trust land issues. Tribes are to notify counties in advance about applications to transfer lands from fee to trust. In review of treaties going back to the 1800s, treaties have addressed citizen ship, and in the case of the Dawes Act the transfer of land titles to individuals who would have to stay on land for 25 years to become citizens. Some sold off title or resources, leading to checkerboard within reservations. In 1971, sovereignty

as an issue was raised by President Nixon. In 2009, the Supreme Court ruled in a Rhode Island case that no lands can be transferred from fee to trust if the tribes were not listed in the 1934 Reorganization Act; in Minnesota, the White Earth band is listed by other Chippewa bands are not listed. Now discussion is revolving around these issues. The Chair distributed a NACo proposed policy resolution; background information at NACo does not progress after policy adoption. Teri Lamplot, sponsor of the resolution, argues that PILT does not include trust land on Indian reservations and that if these are federal government lands and counties are to provide services to that land, counties should be paid for lost property taxes.

NCLUCB, Etc.

1. Conflict Management: Discussion will await the attendance of Mike Carroll, DNR.
2. ARDC: Pat Henderson reviewed the overlap of ARDC counties and NCLUCB member counties and the divisions of ARDC: Regional Planning Division; Metropolitan Interstate Council serving Douglas County, Wisconsin, and St. Louis County; the Arrowhead Area Agency on Aging; Technical and Training National Office for the American Scenic Byways, including the Great River Road out of Grand Rapids, Edge of the Wilderness Scenic Byway, the North Shore All American Road, the State Scenic Highway cutting across Superior National Forest and the, for potential national status, the Gunflint. ARDC also gets involved in such areas as outdoor recreation planning, Range Readiness and housing. Exec. Director Henderson expressed interest in partnering with other RDCs in the northern region of the state. She invited collaboration and using the Board as a sounding board for issues.
3. American Recovery Act: The Chair distributed the Table of Contents of the American Recovery Act Guidebook put out by Rep. Oberstar's office. Exec. Director Henderson noted that there was not, before this publication and note on the Congressman's website, a single point of contact for access to information on the act. The Chair also distributed a handout from John Ongaro on the Minnesota budget and an update from Megan Helge on the Federal Budget.
4. Tax and Easement: Mr. Engwall reviewed that on tax and easement issues, assessors have latitude on they value the place on land. In townships with a large private landholder, such as Blandin, changes in assessments may significantly impact the small number of families living there. A workgroup may be assembled this summer of county board members, assessors and others to discuss the issue. Comm. Beckel raised the issue of value of wetlands from which all credits have been sold. Easements are to keep current use in place, and so tax values, though the loss of development potential, and potential taxable value, has concerned townships. Potential changes resulting from changes in tax values will be explored. Mr. Engwall will keep the Board informed.

Meeting adjourned at 12:10 p.m.

Next meeting: May 7, 2009, 9:30 a.m. Mining Reclamation Classroom, IRR Building, Chisholm, MN.

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