

NORTHERN COUNTIES LAND USE COORDINATING BOARD
Minutes
Thursday, May 7, 2009
Iron Range Resources Mining Reclamation Classroom, Chisholm, 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 Brian Napstad, Aitkin
Commissioner Charles Lepper, Koochiching
Commissioner Wade Pavleck, Koochiching
Commissioner Rich Sve, Lake
Commissioner Jack Swanson, Roseau
Commissioner Dennis Fink, St. Louis
Commissioner Mike Forsman, St. Louis
Commissioner Steve Raukar, St. Louis

Others Present:

Craig Engwall, Department of Natural Resources
Matt Huddleston, Lake County Coordinator/Planning and Zoning
Bob Tammen, Soudan resident
Pat Tammen, Soudan resident
Elanne Palcich, Chisholm resident
Douglas Skrief, NCLUCB Staff

Introductions

Administrative Actions

1. Approval of the agenda with the following additions:

- 1) Correspondence: Wikipedia listing of NCLUCB
- 2) State: Mention of mine permitting under State Wetland Conservation Rule Update
m. Napstad s. Chezick

2. Approval of Minutes: February 12, 2009 meeting

With the correction that on page four (4), number seven (7), to read "County boards act as town boards to unincorporated townships."
m. J. Swanson s. Sve

3-4. Financial Report and Bills:

The Executive Director, in the absence of the Treasurer, reported a general account balance of \$88,996.17, and a Land Use Conflict Management balance of \$15,005.28. Total accounts balance, after payment of approved expenses: \$104,001.45.

m. Raukar s. Napstad

The Executive Director submitted an invoice for \$873.71 for one month of professional services and expense reimbursement. An invoice was received from NorthStar Publishing for Website design and hosting, for two years, \$1,872.27. And an official postage box in Ranier, Minnesota, was billed at \$54.00.

m. Raukar s. J. Swanson

Correspondence

1. Les Bensch of the Lessard Outdoor Heritage Council had telephoned and emailed that he wished to visit the Board in the near future together with elected officials. Comm. J. Swanson noted that at a recent meeting of the MRCC, Bill Engebretsen reported on activities of the council.

The Chair noted that HF 1231 sponsored by Rep. Mary Murphy (DFL-Hermantown) had been the focus of intense discussions. A 96-page bill included, on p. 77.11, "Lands purchased, restored, or protected by easements with money from the outdoor heritage fund are not eligible for wetland replacement or

mitigation credits.” MRCC is working on the bill as is John Ongaro, and the Department of Natural Resources might have comment. A bill from the previous year asked for wetland credits but had no formula and the resulting bill only included public land as opposed to private land. Attention was paid to the current language, in part because of MRCC input. Rep. Murphy at committee meeting did not allow for public comment in hearings, only the speaking to amendments. Mr. Ongaro reported optimism before the meeting, which did not satisfy all parties. Reportedly, Blandin Paper asked for credits for wetlands in their easement agreement rather than having them go to the state. Representatives and lobbyists attempted unsuccessfully to work things out after the meeting. Significant conversation continued over the ability of counties to meet no net loss goals.

Mr. Engwall reported that in conversation with Bob Meyer, the DNR assistant commissioner and lobbyist, it seemed as if the DNR might be in agreement and things were being worked out presently on the floor. The issue might be taken out of the House side on the floor or it might be dealt with in conference. There has been confusion over the Blandin forest funding. If Blandin wishes to preserve carbon or wetland mitigation credits, this might be acceptable as long as they are not lost from the system – which is what the bill does. Blandin’s action is not seen as double dipping. Reserving of rights should be reflected in appraisers’ evaluations. The Chair added that an easement will say what is paid for, and what is not will remain with the property owner. It is not unusual for large landowners to begin to see that credits are as valuable as the land itself. The issue will continue to loom as the legislature recognizes the value of wetland credits. There is no present language in any wetland bill that gives credit for protecting wetlands.

Comm. Napstad reported that Aitkin County has analyzed claiming carbon credits on its land. The base factor is determined by current activity and is not credited, rather, activity to sequester more carbon has to be initiated in order to gain credits. Current land management, such as thinning of trees, would have to be increased. Involvement in a voluntary program might implicitly endorse cap-and-trade; capturing income for the land department could endorse a system leading to higher energy rates for citizens. As for wetlands, WCA treats sections of the state differently dependent on the amount of wetlands in a county. The proposed bill treats the state as one entity, unlike the Wetland Conservation Act. More work needs to be done on a county-by-county basis, with attention to percentage of wetland currently held. Wilkin County may get 1000:1 in credits whereas Aitkin might be counted at 100:1; language can be created parallel to that in WCA regarding less than 50% and greater than 80% counties.

The Chair recalled a challenge in the previous year not to go too far in formula creation. Availability of creation of wetlands in Northeastern Minnesota may amount to one million acres, according to a report to commissioners by Bahr Engineering and others, but given the sequential order of steps, St. Louis County was down to several thousand acres. If mining or other economic development occurs, northern counties will end up going elsewhere for credits and paying a premium. Future development could be curtailed under this bill. Bahr Engineering is respected in the field with credible new staff. The situation reflects that there is little incentive to put in credit potential, and there is little incentive for private land owners to do the necessary work to create wetland credits if they have to make the investment prior to credit calculation; credits might end up being worth less than expected, as has happened in Koochiching County.

Comm. Pavleck recommended a proposal from the Board to promote a level playing field and a benefit to counties where counties could approach a central source regarding wetland issues to move projects forward. The Chair reported that he had written a letter for MRCC and that John Ongaro had encouraged favorable action; the bill at this late date is in progress, though Reps. Anzelc and Dill are working on it. A separate piece of legislation may be required next year. Exec. Dir. Jaschke of BWSR may be more receptive to conversation with the Bahr study now in hand.

2. The Exec. Director reported that the State Auditor had required a year-end report for 2007 and Chuck Hardtke of the St. Louis County Auditor’s Department had responded with the appropriate form.

3. The Exec. Director reported an email from St. Louis County citizen Janet Karon requesting attention to notice and accessibility and recording of Board meetings. She was referred to the Board web site. Tapes of meetings are for use only for reporting of minutes.

4. The Chair reported that he had corresponded with Wikipedia, the user-created web encyclopedia, and noted that the description of NCLUCB, with reference to himself, under the site’s Wise Use article had been removed and the editors had revised the whole section, saying they had accepted the position and made adjustment.

Discussion Issues

LOCAL

1. Roseau County Update: Comm. J. Swanson reported on a House File on the sale of 2,300 acres of Consolidated Conservation land in Roseau County. Roseau County testified; the DNR was opposed. The legislation will die. Bob Meyer, Assistant Commissioner for Legislative Policy, will come up to the county this summer to look at specific parcels for sale in cooperation with the county.

STATE

1. Land Use Reform Bill: Senate Bill 913: Lake County, reported Comm. Sve, had attended recent legislative conference meetings. Comm. Sve and the Chair had visited with Sen. Bakk, and the Senator had reported that if a county was 60 % public land, the bill did not pertain. This language had, in fact, been removed. Matt Huddleston reported that the bill wished to reduce unincorporated housing density to one unit on 40 acres. It exempted certain areas such as shoreland and non-commercial seasonal recreation property; it also allowed some modifications under certain circumstances related, for example, to carbon emissions and septic standards and it limited commercial development outside city growth areas. They removed existing language on subdivision control by cities and added city growth language restricting development to 1 unit per 40 acres density within a two-mile boundary until a growth area was determined, meaning that some municipalities in northern Minnesota would be stuck at a lower density level. The bill's early language did include language regarding 60% counties but did not exempt them from the whole bill. Because this language was pulled, Sen. Bakk was mistaken in claiming there was exemption. Other recent legislative sessions have seen proposals for counties to add density language to comprehensive plans. The current bill may be moved forward next year with more refined language. Impracticalities may inhere in attempts to zone by exempting properties, such as noncommercial seasonal properties, on the basis of use. Existing properties may become winners on a first come basis. The bill was tied to carbon emissions to keep travel restricted to cities. Counties may create language on their own without blanket restrictions.

Two city organizations, reported the Chair, including the Metropolitan Association, joined the MECA Board in support. The bill started out as an annexation issue, once done through the Municipal Board and now carried out by mutual agreement as a part of Minnesota Planning. As Minnesota Planning reduced its profile, annexation became more difficult. The current bill has legs due to the carbon issue as well, and the language made its way into various bills. Sen. Bakk did say the legislation was dead for this year, though he spoke with great enthusiasm about elements of the bill such as access to second tier timber and recreation interests beyond initial 40-acre parcels. Comm. Sve concurred about Sen. Bakk's passion for second tier access. AMC was disappointed to find that the bill was not dead initially.

Comm. Forsman reported a nationwide movement to congregate residents in cities due to interest in reducing carbon emissions and to provide services. Bringing health and social services to rural areas are costly, so passion is understandable, but even those most environmentally oriented may choose to live in rural areas. Comm. Lepper inquired after language existing now regarding city jurisdiction outside a two-mile limit. It exists if a township has no ordinances, replied Comm. Swanson; and in unorganized areas in Koochiching, added Comm. Pavleck. The Chair noted that Class A cities have rings around them that restrict use. Mr. Huddleston read language from the bill that would make annexation easier. Comm. Pavleck added that a county with a dwindling population may find it harder to keep solvent with such a restricted radius. Comm. Napstad related that the origins of some of these bills reflected concerns of some to preserve farmland around larger cities. Now the language involves carbon footprints and reference to manmade global warming, though climate change has existed historically, and policy makers must keep that in mind as decisions are made. A wing of the environmental movement, added the Chair, is promoting the establishment of policy before public sentiment reverts to a more cautious stance; as positions become more general, an environmental wing becomes more aggressive. Recreational use might be restricted in subsequent related legislation, commented Mr. Huddleston.

2. Wetland Conservation Rule Update: While nothing has changed since the Board was addressed by Les Lemm, reported Comm. Napstad, public hearings in Grand Rapids the previous weekend were attended by Comm. Beckel who reported to Comm. Napstad that there are 12,000 acres in Aitkin County being considered for mitigation, a process of which the county was unaware. Mining operations, such as Mesabi Nugget, Minnesota Steel and Polymet are involved. There are 2,000 acres in Aitkin in the banking system. An area next to the Mississippi River was being considered to be of Exceptional Natural Resource Value. Crediting is complex and takes time and expense. A number of state organizations put together a large packet, including a wetland mitigation strategy. The county was not involved in projects outside its borders. Because of increased mining activity and need for credits this is becoming a matter of current interest. The Aitkin County TEP panel became aware of the issue and the county board has sent to BWSR a resolution that requested BWSR to work with the DNR to include the LGU in discussions of wetland banking decisions. The county has no sign off authority, which bothered some parties. The county's

wetland specialist was enthusiastic about BWSR and DNR response, which has resulted in four BWSR and eight DNR representatives meeting to exchange positions. Another meeting will occur to create an agreement that prior to any official approval of sites the LGU will become involved in some fashion. Barr Engineering is doing wetland mitigation studies, including looking at putting part of a 1,000-acre sod farm into a wetland mitigation bank while documents showed a tiled area existed but the county could not find the tiling. The spreadsheet shows 13,947 acres being considered for wetland mitigation. A good level of conversation is occurring. There will be an aggressive ratio of replacement.

Mr. Engwall noted that mining issues are very complex. The DNR supports mining, but when mining interests look for mitigation areas they look to what is available, such as in Aitkin County. The DNR finds that existing management plans for areas are undermined when replacement needs do not correspond. The Army Corps of Engineers drives a lot of the progress. Discussion will be important.

The Chair recalled that Floodwood area citizens recently attended county board meetings voicing concerns over 3,700 acres in St. Louis County for which about 13,000 acres of wetland needed to be created. The county had no authority because DNR mining was the driving force and the Army Corps was the mitigation authority. Comm. Forsman added that mining companies get no credit for their tailing sites that fill with water and which are used by wildlife.

Comm. Napstad pointed to policy failures at the state level, especially pertaining to WCA. If 10,000 acres are acquired in Aitkin County for mitigation it may amount to \$20 million plus cost for creation of wetlands; perhaps it is better to look at dollar-for-dollar rather than acre-for-acre mitigation. That amount will not get the same amount of acres in western Minnesota, where land is prone to flooding, but 2,000 acres of restoration there would do more for water quality than more land in Aitkin County. This is a policy failure of WCA. The Chair warned that creation of wetland value in another part of the state raises price considerably. Comm. Napstad noted that they are already more valuable.

3. Shoreland Rule Update: The intent of the DNR is to try to get the Shoreland Update passed in 2009, reported Comm. Napstad, noting that talk of rule suspension relates to 2010. Rules are not going to make a lot of difference on the ground. Minimum lots would be increased to 100 feet of frontage and go up to 30,000 square feet from 20,000. Most counties already have more stringent rules. The biggest issue was about language that says “counties will... shall...” especially as it relates to staffing by counties. The DNR heard county concerns. There was question if the rule could contain language relating to the DNR having to fund rule requirements. Statements of Need and Reasonableness (SONAR) define costs to counties to implement new rules. Counties are getting funds, in part through block monies, but the Legislature is not bound to appropriate funds for that purpose. Another significant concern centered on counties having to adopt these rules within two years. This time it is three years. A suggestion that that period be counted from the time of availability of funding to carry out the rules was not looked on favorably. More management will be required, but for those counties with shoreland management in place, the burden will not be significant. More management concern over agricultural buffers might be in order.

Comm. Pavleck noted that some definitions caused concern, for example the phrase “set backs of natural vegetation,” which may be open to broad interpretation. Having commissioners present made a difference at the rule-making meetings. The Chair asked if anything was to be done at this point other than inform staff of changes. Comm. Pavleck responded that county boards might respond as it was the intention that counties would be responsible for implementation. The DNR initiated a proposal that they would contribute information, but counties remain largely responsible, which is an overriding issue. The Chair recalled arguing on behalf of AMC with BWSR for funding for already-overextended county employees to carry out duties, while the response was that “counties have the capacity” to implement new rules. Comm. Forsman noted that counties with wetland specialists on staff may count themselves ahead of other counties without such expertise.

The Chair handed out a summary of the Shoreland Rule with a reference to the relevant web site. Comm. Napstad reviewed the next steps in which each county directs its Environmental Service Director to compare proposed rules to their own county’s specific ordinances. Comm. Pavleck did make clear, he said, at rule making meetings that he and Comm. Napstad represented NCLUCB; he added a compliment to the DNR staff for its work. The Chair thanked Mr. Engwall and the DNR for helping to place Board representatives on decision-making bodies.

FEDERAL

1. Clean Water Restoration Act: The Chair reported that the CWRA legislation is on the fast track. On May 7 the Senate was to have the mark up ready. Two years previous there was little support. Rep. Oberstar believes there is easy passage in the House. The President has indicated support if it passes Congress.

Comm. Pavleck asked after the Rapanos decision of the Supreme Court, in which a nexus to a stream or lake was determined not to exist in a Michigan case, and whether it was correct that Rapanos himself had given up his development due to pressure in Michigan. The Chair replied that he did not know that situation, but that the Supreme Court decision is perhaps the most telling influence on the creation of the present bill, which would eliminate a two-tier decision-making process created by the courts. Earlier decisions on the definition of navigable waters had not resolved the issue. Rep. Oberstar is now saying that legislation must go back to the original intent of the act. This may be true in Arizona and New Mexico, but not Minnesota, Ohio, Montana and California and about forty other states. The bill appears to expand the authority of the federal government, though others may argue otherwise. Comm. Lepper expressed concern over more authority being placed with the Army Corps, which he described as a broken agency. Rule making will become more complex, agreed the Chair. If you replace “navigable waters” with “waters of the United States” and then go on to explain what new exemptions will be in place, the bill reads as a simple document. However, the Chair continued, the EPA in 2007 recommended forgetting the exemption for agriculture because unless you plug up a ditch a nexus may still exist where water leaves a property. The possibilities of interpretation on either side are open at this time.

Comm. Lepper suggested that the act has already been interpreted according to the proposed language change and managed similarly by the Corps. Comm. Pavleck asked that NACo’s Julie Ufner keep counties informed through NACo. An alert, the Chair added, would go out the next day. He recalled meeting with the Wetlands Advocacy Coalition; the question was about how the rules were implemented, without sufficient time for public input, to enforce the law.

Comm. Napstad asked where the bill stands now in relation to counties now and in the future: could the Corps step into local land use decisions? They would be able to do that the day after the bill was enacted, replied the Chair. The only limiting factor is the definition of “navigable waters” which limits the distance away that the Corps could claim jurisdiction. Recalling an airport project in Koochiching County delayed by a mitigation demand, Comm. Pavleck pointed to the potential of extreme interpretations of wetland in water-rich counties.

Comm. Forsman recommended that since passage of the bill is likely, that problems that arise be documented. Rep. Oberstar may, without having examples before him, hold, from his perspective, that the demands of the Corps may not be onerous. Rulemaking may be the issue; if not, added the Chair, then the Clean Water Act will have to be reopened in subsequent years to bring it up to date. NACo is very opposed to the bill; a NACo committee person to reintroduce it is needed.

2. Land Bill and effect on PILT: The Chair, in the stead of Comm. Johnson speaking on Federal PILT issues, referred to the above mentioned legacy amendment bill handout. A reference in the state bill at 90.27 of Section 4, introduced by Rep. Dill, includes language about a one-time PILT payment to a county if legacy money were used for natural resources land acquisition, the payment being equal to 25 percent of the appraised value of the acquired natural resources land. The Chair made comments to Rep. Dill, asking if all money did not come from the Lessard bill would the rule apply; and he added a suggestion that protection language be inserted that local government aid not be cut, requesting that the 25% payment would be put into a trust fund and extracted at the rate you would have got for a PILT payment on an annual basis. Townships were not considered as part of the legislation, though if monies were put in a trust fund they would be distributed to traditional recipients. Rep. Dill did not think this section of the bill would get past conference.

3. Gray Wolf Endangered designation lifted: The Exec. Director distributed a summary of the cover page of the Fish and Wildlife announcement that removes the Gray Wolf DPS “from the lists of Threatened and Endangered Wildlife, removes the currently designated critical habitat for the gray wolf in Minnesota and Michigan, and removes the current special regulations for gray wolves in Minnesota.”

NCLUCB, Etc.

1. Conflict Resolution: Mr. Engwall suggested that Mike Carroll may wish to bring up the potential use of the Conflict Resolution flow chart. The Chair recalled that, as not all members had been present during the creation of the process, a time may arise when it will be of relevance at a meeting and will be kept on the agenda.

2. Internet Site Launch Complete: The Exec. Dir. announced the launch of the Board’s website at nclucb.org. Comm. Napstad remarked: that the calendar might include the time of meetings; that “Issue Tracking” might be a helpful addition as a quick link to sites relating to hot-button issues; that “Log In” appears on the home page but without passage to access; that he was confused by the blue highlighting of days on the calendar.

3. Invitation to Congressman Oberstar: Comm. Pavleck recommended an invitation be extended that Representative Oberstar be invited to a meeting, perhaps in Chisholm. Land use as it pertains to transportation might be a subject, for example. Comm. Forsman recommended providing the congressman with local input with anecdotal quality. The agenda could be dedicated to his visit or an afternoon session could be added.

4. Management of State Lands: Mr. Engwall reported that the Legislative Auditor was to be holding a session on the management of state lands. Two staffers will be providing a report due in October on why lands should be acquired. The staffers are scoping the project presently. If discussion with the Board is appropriate, Mr. Engwall will encourage them to contact the Exec. Director.

In another matter, Mr. Engwall reported a meeting of 18 township supervisors and others of tax implications of land easements. He will invite state representatives to speak to the issue. He is setting a date and would welcome Board participation. He will, again, contact the Exec. Director.

5. Minnesota Tribal Council Meeting: An email from Joe Matthews, AMC general government policy analyst, to the Chair suggested the possibility of a meeting with the Minnesota Tribal Council within the next 45 days. The Chair said he responded that due to the legislative schedule, a meeting in September or October would be better. He will keep the Board informed of a possible meeting date.

Meeting adjourned at 12:10 p.m.

m. Lepper s. Forsman

Next meeting: June 4, 2009, 9:30 a.m. KOOTASCA Senior Center, Northome, MN

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