

ENVIRONMENT AND LAND USE COMMITTEE
Department of Land Management
MEETING MINUTES
May 13th, 2009 8:45 AM
COUNTY BOARD ROOM

Chairman Halderson called the meeting to order at 8:45 AM.

Committee members present: Paul Halderson, Gerry Van Tassel, Chuck Zauner, Michelle Haines Richard Kiekhoefer, Dave Quarne and Rick Geske.

Staff/Advisors present: Kevin Lien and Virginitte Gamroth. Andrea Sveen and Vickie Stalheim were present for only part of the meeting.

Others present: Deloras Vind. Personnel Director Jami Kabus was present for the Closed session.

Halderson stated that the Open Meeting Law had been complied with through notifications and posting.

Approval of Agenda – Zauner made a motion to approve the agenda as presented, Van Tassel seconded, motion carried unopposed.

Approval of Minutes – Kiekhoefer made a motion to approve the April 8th, 2009 regular session meeting minutes, Zauner seconded, motion carried unopposed.

Public Hearing – Larry Engen – Land Use Change/Rezone – Town of Albion – Chairman Halderson opened the public hearing at 8:47 A.M. Haines read the public hearing notice aloud. Sveen informed the Committee that Engen is requesting a rezone from Exclusive Ag 2 (EA2) to Primary Ag (PA) in the Town of Albion. Engen had made a previous split in the forty therefore he needs to rezone it to Primary Ag (PA). Sveen stated the public hearing was publicized in the paper for two consecutive weeks and letters were sent to all adjoining landowners. Sveen received no responses for or against. Sveen stated Engen plans to parcel off the house with about six acres which would leave a remaining parcel of approximately 16.12 acres. Sveen read a letter dated February 11, 2009 from the Town of Albion which stated, at their February 10, 2009 meeting, the Board passed a motion in favor of granting a zoning change on the Engen property. Chairman Halderson called for public testimony, of which no one had registered. Chairman Halderson inquired as to how far the Engen property was from any municipal area. Engen responded the property is approximately two miles from the Town of Eleva. Kiekhoefer asked what Engen plans to do with the property. Engen replied that he would not be developing the property as he plans to sell the parcel to his brother. Lien responded under current zoning, an additional split cannot be made without changing the density requirements. Since Engen has already sold off a lot on this parcel, a change needs to be made to a higher density ag zoning to make the additional split. Halderson questioned why the two parcels? Engen responded that he currently lives on the homestead and wants to sell the rest. Chairman Halderson closed the public hearing at 8:52 AM. Zauner made a motion to approve the Land Use Change/Rezone for Larry Engen, Van Tassel seconded, motion carried unopposed. Lien informed Engen that rezones need to go to County Board for approval, so Engen would be receiving a letter advising him as to when the next meeting will be held and Engen should plan to attend. Once the rezone is approved by the County Board it is final.

Election of Vice Chairman – Chairman Halderson informed the Committee that Gary Monson was Vice Chair and since Gary is no longer serving on the E & LU Committee a successor will need to be elected. Halderson suggested tabling this issue until next month since the County Board Chair will appoint a new town representative for the E & LU Committee at the next County Board meeting. Quarne made a motion to table the election of a Vice Chairman until next month, Van Tassel seconded, motion carried unopposed.

Reappointment of Board of Adjustment members – Lien stated two Board of Adjustment members' terms are expiring at the end of June. Obert Lundberg, Pigeon and Nancy Horton, Ettrick, have both agreed to reappointment for another three year term. Kiekhoefer made a motion to forward the names of Obert Lundberg and Nancy Horton on to the County Board Chair for reappointment to the Board of Adjustment, Zauner seconded, motion carried unopposed.

Resolution to increase 2009 Traverse Valley Project State Allocation and 2009 Budget Revision–I Stalheim informed the Committee that last fall when the Independence Elk Rod & Gun Club filled out their application for Conservation Aids they stated the Traverse Valley Creek Trout Project would cost up to \$10,000 and they were hoping to get up to \$5,000 in State cost share money. The County only has the authority to allocate \$1,991.00 in cost share money, however, there is a state pool in which any money left over from other counties can be distributed to other counties. Stalheim stated she received a letter in April notifying her that the Elk Rod & Gun Club would be receiving \$1,751.85 additional State cost share funds, therefore the total amount of cost share money the Elk Rod & Gun Club will be receiving is \$3,742.85. Stalheim added that two resolutions are needed; one to increase the the Traverse Valley trout improvement project dollar amounts, and a budget resolution to show the extra State money coming in. Halderson verified that the Elk Rod & Gun Club would pick up the matching funds. Kiekhoefer questioned what specifically the Elk Rod & Gun Club is doing. Stalheim responded they are doing riprap on the Ed Anderson farm. Van Tassel made a motion to accept the budget revision and forward the two resolutions on to County Board, Kiekhoefer seconded, motion carried unopposed.

Tree & Shrub Program - Gamroth provided the Committee with a written report summarizing the 2009 Wildlife Habitat Tree & Shrub Program. Gamroth stated 226 orders were filled with approximately 16,545 tree/shrubs. Gamroth informed the Committee that income of \$5,503.55 was reported and has been entered into the E & LU checkbook. \$3,500 will be transferred to the DLM account for use on any I & E (Information and Education projects) such as soil judging and materials for school visits. Gamroth felt the program was successful and many positive comments were received. Halderson commented that the sales stay pretty level. Gamroth stated she strives to keep the income at a level where the \$3,500 obligation for I & E expenses can be met.

Soil Judging Contest – Lien stated Blair-Taylor High School will be hosting the Soil Judging Contest on May 19th and a Committee member is needed to hand out awards. Quarne volunteered to attend to hand out awards.

Surveying Update – Lien stated since County Surveyor, Joe Nelsen, is here in the office today, he will give his Survey Report. Nelsen referred the Committee to two survey reports in their packet. One report reflects the work that has been done in T20-7, Ettrick township. Nelsen stated that most of the work that was done was initial and secondary GPS work in preparation for corner search. Primary GPS is getting survey control of all the section corner locations, once that data is acquired and complete for the whole township, the data is calculated and compared with survey notes and other record evidence and additional areas are identified for secondary GPS. 94 corners are completed of primary GPS out of 120. Nelsen added the other report is for T21-9 which is part of Arcadia township. Most of the work done there were corner searches and marking back-hoe excavation sites, which were completed this week. Primary GPS is

done and some corners have been set and some secondary GPS has been done in preparation for corner search. Nelsen stated in the near future, work will be done predominately in T21-8, part of Preston and part of Arcadia. Halderson questioned Nelsen about corner section searches. Nelsen responded finding section corners in a road usually runs about 30%, the percentage is better “off road”, obviously because there isn’t 150 years of road building to affect the monuments. Halderson questioned at what depth the survey monuments are usually found. Nelsen answered usually at “original grade”, so if the road has a four foot fill, they usually go down to original grade and well into the subsoil. Usually the guideline when excavating, if looking for a wood stake mark, which is nothing more than a black mark in the soil, is to get through the topsoil down into the subsoil and get a nice light color so the black mark can be seen and also be deep enough to assure that no evidence below was missed. Zauner questioned how Nelsen knew where the original grade is since elevations are not on the old records? Nelsen responded by soil profiles and if attention is paid while excavating, the blacktop comes off, the lift off, the gravel and then there might be a sand lift or a shale lift and then you start seeing old road beds and sometimes, you can even see evidence of buggy tracks. As you go down the edge of the hole you have a perfect historical profile of everything that’s happened in the road. Nelsen added that he frequently gets questioned as to why the survey marker is in the middle of the road. Nelsen responded that typically the stone was there before and the road was built on top of it. Kiekhoefer questioned what the “shale” leaves for evidence. Nelson responded that shale usually leaves a green tinge to the soil. Van Tassel made a motion to pay the two Survey bills as presented, Haines seconded, motion carried unopposed.

Director’s Report – Lien informed the Committee of a benefit to be held June 20th for Gary Monson. Discussion took place on a plaque for Monson.

Lien stated County auditors will be here May 11th through May 22nd so they will meet with each Department regarding budgets.

Lien reported the TRM (Target Runoff Management) grants, staffing grants and year-end reports were all due on April 15th. This year additional TRM grants in the amount of \$926,326.00 were applied for 2010-2011 as these are two year applications. We have close to \$1,000,000.00 in allocations for 2009-2010.

Lien stated that he wanted to inform the Committee regarding a public hearing that the Board of Adjustment (BOA) held the previous week. Lien reminded the Committee of a cabin that was viewed on the Fall tour, on McKeeth Road in the Town of Caledonia. The landowner had been instructed he could add on East and West, if they kept the original cabin intact. Lien added when the Committee last visited the site, they had elevated the cabin, put it back on its new foundation but no new construction had started above the foundation. Around March 2009, the landowner started adding on to the structure and when they got the new building up around the old one, someone made a bad judgment call to remove all but one wall of the old cabin which resulted in the structure losing “legal nonconforming status”, so the landowner needed to come to the BOA for a variance. Lien received a letter from the Department of Natural Resources (DNR) which stated because the landowner lost legal nonconforming status by removing the structure that if the BOA would grant a variance, the DNR would appeal the BOA decision and ask for removal of the structure. The BOA tabled a decision and asked if Lien would meet with the landowner and a DNR representative down at the site. Lien met with both parties. The landowner is stating that the architect and builder made a bad judgment call by removing the three walls. The BOA felt the landowner is ultimately responsible and that any professional would not make that drastic of a decision without first consulting the landowner. Lien stated a resolution is trying to be worked out. Lien noted one problem, on the Black River, is a 25 foot bluff line setback from the river and the structure there now is only at 21 feet. Shoreland/Zoning is typically 75 feet from the ordinary highwater mark and no structures are allowed, but because our Ordinance states that 25 foot setback from the bluff line, anything that is within that setback along the Black River is considered non-conforming. Lien has met

with Corporation Counsel on this issue and this was not the County's original intention. The intention of the Ordinance was, because the sands along the Black River are very unstable and because of the aesthetics and scenic beauty, to keep back 25 feet. Because that 25 foot setback provision is in our Shoreland/Zoning Ordinance, DNR has jurisdiction. Lien stated when the Comprehensive Zoning Ordinance and the Shoreland Zoning Ordinance are revised that language will be moved from the Shoreland/Zoning Ordinance to the Comprehensive Zoning Ordinance so the County can still enforce the 25 foot setback but then DNR won't have jurisdiction over non-conforming status. Since the landowner does not meet the 25 foot setback, DNR has the right to appeal the County. Lien cited previous landowner disputes with the Shoreland/Zoning Ordinance and DNR, the County lost and it cost the County approximately \$30,000 and the result was that both nonconforming structures had to be put back to their original status and the landowners were fined half of the attorney fees which amounted to approximately \$7,500.00 each. One landowner had to support the roof, tear off a second story and put it back down, the other had to support the cabin, remove the basement and put it back down. Lien added, in this case, the landowner and the architect had talked to him about potentially cutting off four feet of the structure to meet the 25 foot setback. In talking with DNR, if the landowner would do that, DNR probably wouldn't appeal the County. Lien stated he talked with DNR directly and DNR stated when the BOA or the E & LU Committee grants a decision, there is a 30 day appeal process in which anyone can appeal within those 30 days. Once the 30 days passes, it can't be appealed. So, if the BOA would grant this, the homeowner probably wouldn't do anything for 30 days to make sure that DNR doesn't appeal it and then proceed with their construction. Lien informed the Committee that the structure is only 26 feet wide, has two stories and a full basement and removing four feet of that would be a pretty tough task. Lien added the landowner owns 22 acres and the potential of moving the structure is there as he does have some conforming land, however the landowner has enrolled the land into the Mississippi River Valley Conservancy which doesn't allow a landowner to add any new structures. Therefore the Conservancy is stating the landowner has a "hardship". Lien told the Conservancy representative this was a hardship created by the landowner himself. Van Tassel questioned if the landowner could put the walls back? Lien replied the walls are gone and non-conforming status was lost. Lien stated, in a conversation with the DNR, that DNR would not appeal if the landowner put the original 14 X 26 structure back (which was 21 feet from the river). The current structure is 26 X 87 and this is going to be his permanent residence. Lien stated when he first met with the landowner, his first explanation was once the builders got into it, the walls were too dilapidated to keep. Lien had made it very clear to the landowner that he was bound by the Ordinances to keep the non-conforming structure. Lien explained to the Committee what is called a "sunset provision" which is in the Shoreland/Zoning Ordinance. This provision states that any structure that is existing can be there forever, however, the structure can only be improved up to 50% of its' equalized assessed value over the life of the structure. The idea behind this provision is that at some point in time, the structure would become so dilapidated that it would have to be removed. DNR is talking about changing this provision, but to date, any non-conforming structure is still bound by that 50% rule. In this case, because the landowners are within the 25 foot bluff line setback, DNR is saying the County should also be enforcing the 50% rule. DNR will overlook it in this case, if the landowners complies with the other setbacks, otherwise DNR will request that the landowner tear the structure down. In talking with Corporation Counsel regarding the history of the Ordinance, Lien understood the 50% rule was never intended to apply to the bluff line setback; it was only to apply if a landowner was in the 75 foot landward side of the water for Shoreland/Zoning. Lien stated that DNR representatives told him that since Hurricane Katrina they have federal mandates which include very strict enforcement of Shoreland and Floodplain Ordinances, so basically if the Board of Adjustment grants the variance as it currently stands, DNR will appeal it, but if a resolution can be found they may or may not appeal it.

Next Regular Meeting Date was confirmed as Wednesday, June 10th 2009 at 8:45 AM in the County Board Room.

Closed Session per WI Stat.19.85(1)(g) to confer with legal counsel rendering advice concerning strategy with respect to potential litigation. At 9:30 AM, Van Tassel made a motion to go into Closed session, Kiekhoefer seconded, after roll call vote, motion carried.

Closed Session per WI Stat.19.85 (1)(c) to consider employment and performance evaluation data.

Haines made a motion to adjourn the meeting at 10:05 AM, Zauner seconded, meeting adjourned.

Respectfully submitted,
Virginette Gamroth, Recording Secretary

Michelle Haines
Secretary