

MICHIGAN STATE WATERWAYS COMMISSION
REGULAR MEETING

Minutes of the meeting of
August 6, 2004
Escanaba City Hall
Council Chambers
Escanaba, Michigan

A quorum was not present at the August 6, 2004 meeting of the Michigan State Waterways Commission. Chairman Opolka convened the meeting for public testimony and for information only purposes at 9:00 a.m. on Friday, August 6, 2004 in the Escanaba City Council Chambers, Escanaba, Michigan. The following Commissioners were present:

Frank Opolka, Chairman
Janet Mansfield

Commissioners David Giffin, Curtis Hertel, Carol Oakley and John Winn were excused.

Chairman Opolka stated that Commissioner David V. Johnson has resigned from the Michigan State Waterways Commission.

Chairman Opolka stated that because a quorum was not present, there would be no official business conducted at the meeting. However, public testimony and for information only discussion would be considered.

Mr. Lowen Schuett, Acting Chief of Parks and Recreation Division; Mr. Jim Ekdahl, Upper Peninsula Deputy and Department of Natural Resources (DNR) Lansing staff were present.

Chairman Opolka thanked the City of Escanaba for their hospitality and for the use of their Council Chambers.

Public Appearances – Chairman Opolka asked if anyone in attendance wished to provide testimony and Mr. Lechner indicated he would like to speak.

Mr. John Lechner, owner of Lechner Construction, was the contractor for the Bois Blanc project. He stated that in addition to the specified work, he completed additional work at Bois Blanc, which was requested and approved by Bois Blanc Township officials, but has not been paid for the work. He also expressed his concerns about the bidding process regarding the Naubinway Project.

Mr. Boik responded that the extra job performed by Mr. Lechner was not in compliance with the permits granted by the Department of Environmental Quality and the U.S. Army

Corp of Engineers. Chairman Opolka asked the DNR staff to contact Bois Blanc Township officials to see if they could move this forward.

Approval of the Minutes of the May 21, 2004 Waterways Commission meeting has been carried over to the October 15, 2004 meeting.

Project Status Report – Power Point Presentation

Mr. Bill Boik, DNR, provided a handout entitled “Status Report of Active Waterways Projects”. A power point presentation highlighted some of the more high profile and/or unique projects. The following were part of the presentation: Hammond Bay, Dunkle’s Landing Boating Access Site (BAS), Center Lake - Jackson County, Perch Lake - Marquette County, Cedar River Harbor, Naubinway Harbor, Beaver Island, Cross Village, Aranson Island – Escanaba, Cheboygan Lock and Dam, Mackinaw City State Dock and Crystal Lake BAS.

Operations Report

Mr. Schuett, DNR, stated that there has been a great deal of interest in local harbors joining the Central Reservation System. Many harbormasters and local officials have been in contact with DNR staff. Staff will continue to work with the local entities this fall and winter to bring them in the Central Reservation System for the next boating year.

Mr. Schuett commented on a letter from Eagle Harbor Township dated June 21, 2004 regarding the Michigan Department of Natural Resources removal of the active status of the harbor and removal of essential services, including fuel supply, power and bilge pump and the request to reinstate active status and essential services. Mr. Schuett stated that the DNR has changed its level of service at the Eagle Harbor facility due to State of Michigan auditors who had concerns regarding the return on the dollar at the facility. The DNR is currently working with officials of the Township to facilitate a workable relationship with a separate agency set up to deal with this situation.

Facilities Committee Report

Mr. Boik, and DNR staff arranged for a meeting to be held for the Facilities Committee on July 7, 2004 at the Detroit/Wayne County Port Authority Office in Detroit. Serving on this Committee are Commissioners Giffin, Oakley, and Hertel. Commissioner Hertel attended a portion of the meeting and Commissioner Giffin participated via conference call. Discussion centered on the appraisal process for the restaurant property at Presque Isle Harbor. Three appraisals are necessary before any discussions can begin: 1) an appraisal supplied by the community; 2) an appraisal supplied by the state; 3) and an appraisal supplied by an independent appraiser. The local appraisal and the state appraisal have been submitted and the independent appraisal is being conducted.

A discussion regarding the status on Lexington ensued.

Tribal Report

In addition to his position as the Upper Peninsula Field Deputy, Mr. Ekdahl is also the DNR's lead on Tribal issues. He provided a hand out to the Commission which listed the 12 Federally Recognized Michigan Indian Tribes and the other tribes called historical tribes which are not federally recognized.

Mr. Ekdahl defined "treaty" as a contract between the federal government and tribes. Traditionally, a treaty offered peace between the two entities and many times involved a transfer of funds for land.

The term "reservation of rights" can be confusing; it refers to rights to hunt and fish. This term defines a given right as hunting and fishing rights were never "given up" at the time of the treaty.

The U.S. Supreme Court has declared there are Canons of Construction – rules of interpretation that all lower courts must use when considering Tribal issues. The two main ones: 1) treaties must be interpreted by courts today as the tribes would have understood them at the time of the treaty and 2) and in dealing with any ambiguities in interpreting the treaties, the courts will rule in favor of the tribes.

Of the 8 primary Indian treaties, the courts have said two have retained their hunting and fishing rights.

Treaty of La Pointe (area 8 on the map) has been impacted by some court decisions which have come from the Wisconsin Court. The Treaty does provide for commercial fishing rights and for the right to net fish in inland lakes.

Mr. Ekdahl stated that the tribes do make extensive use of public boat launches and that they are very respectful users of the launches.

1836 Treaty has and continues to have controversial issues. There are currently 5 tribes, and will consist of 6 tribes.

Providing a basic history of the past, Mr. Ekdahl stated that in the late 1970's, Judge Fox, Federal District Court Judge in Kalamazoo, affirmed the tribal right to fish in the Great Lakes, noting that the Judge limited his opinion to Great Lakes fishing only. The resulting plan was in effect for 15 years and expired in 2000. The tribes, the federal and state governments and sporting groups reached an agreement which provides for a new 20 year agreement which is based on a scientific approach to natural resource issues.

The focus is now on Inland Issues, as this issue has remained unsolved by the Courts. All entities are continuing to reach a decision that is federally, politically and socially acceptable. The Federal government has not taken the lead in this issue. This issue will be in Court in February, 2006 to begin the process. The legal process of Discovery has been initiated in preparation for this court date. A key point is the interpretation of the

Treaty of Washington which states that the tribes have rights “until the land is required for settlement.”

Fee Schedule

Provided as a “For information Only” and will be reviewed in October. Schedule will be provided to all Commissioners.

Budget Issues

Mr. Lowen Schuett said that the 2005 year budget will be provided to the Commission at the October meeting. Mr. Schuett reviewed a draft of the projected 2006 waterways capital outlay projects. The Department has been given authorization to merge two areas in the past, but not as of yet received the authority to do so this year.

No action was able to be taken on City of Marquette variance request. Mr. Boik stated that this request has been made on an annual basis, however this request was late in coming. The Commission has recommended approval in the past.

Commissioners Opolka and Mansfield agreed that, because the boating season is well underway, the City of Marquette should continue as it is and return to the Commission at an earlier time in 2005 with their variance request. Mr. Boik stated he has already notified the City of Marquette that they must be more timely in making their request.

Included in the Commissioner’s packet for informational purposes only was a draft response to Mr. Dick Moehl’s request at the May Waterways Commission meeting for free or reduced slips for use by some members of the Great Lakes Lighthouse Keepers Association. The recommendation was made by Chairman Opolka to send a letter to the Association stating that any requests for reduced seasonal rates for moorage of lighthouse groups be handled on a case by case basis. Justification would need to be provided before approval as to why a particular marina is required for moorage. A schedule of time frames for use of the marinas should also be provided before approval is granted. lighthouse keepers association

A copy of House Bill 5870 and House Joint Resolution Z, along with an Analysis, will be provided to all Commissioners. House Bill 5870 would create a new Part 20 of the Natural Resources and Environmental Protection Act concerning the Michigan Conservation and Recreation Legacy Trust Fund and numerous accounts within the fund. The bill is tie-barred to HJR Z. The fund would include the state park improvement account, waterways account, forest recreation account, recreation improvement account, and the game and fish protection account. In general, these accounts directly replace similar, separate funds already established within the state treasury. In particular, the waterways account would include revenue from (1) the former Michigan State Waterways Fund and former Michigan Harbor Development Fund, both established in Part 781, (2) the former Marine Safety Fund established in Part 801, (3) watercraft registration fees, (4) fees for mooring watercraft at state-operated mooring facilities, (5) fees for using state-operated public access sites, and (6) transfers from the recreation improvement account and other sources as authorized by law. Funds in the account

would be expended pursuant to Parts 781, 791, and 801. House Joint Resolution Z establishes the Michigan Conservation and Recreation Legacy Fund and its related accounts (see HB 5870) within the state constitution. The joint resolution also specifies revenue sources and allowable expenditures. In addition, the bill would also establish the Michigan Game and Fish Protection Trust Fund within the state constitution.

Chairman Opolka asked that all Commissioners review the information and be prepared for discussion at the October meeting.

Linda Burnham stated that the Michigan Fishing Guide has a small section which highlights the financial contributions made by the Michigan State Natural Resources Trust Fund (MNRTF) and provides their Mission Statement. This information was included in the Fishing Guide by request of the MNRTF Board. Ms. Burnham suggested that the Waterways Commission should also be included in the Fishing Guide as their funding is crucial to waterways usage.

Chairman Opolka expressed his thanks, on behalf of the Commission, to Linda Burnham for her help during the last two years as the Assistant to the Michigan State Waterways Commission. Ms. Burnham has plans to retire from State service. Ms. Burnham thanked the Commission and the Department for the opportunity to work with the many dedicated Commissioners and Waterways staff and for the many wonderful experiences she had with the Commission.