

LOWER WISCONSIN STATE RIVERWAY BOARD

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MINUTES OF THE DECEMBER 13, 2012, RIVERWAY BOARD MEETING

The Lower Wisconsin State Riverway Board (LWSRB) met on Thursday, December 13, 2012, at the Crawford County Administration Building to conduct a regular monthly business meeting. The meeting was called to order at 5:00 p.m. by Acting Chairman Melody Moore. All members were present with the exceptions of Greg Greenheck and George Arimond. Acknowledgment that the meeting was properly noticed was provided by Mark E. Cupp, Executive Director. A motion to approve the agenda was made by Fred Madison, seconded by Ritchie Brown. **MOTION CARRIED.** The minutes of the November 8, 2012, meeting were considered. A motion to approve the minutes was made by Ron Leys, seconded by Don Greenwood. **MOTION CARRIED.**

The Executive Committee report was presented by Moore who noted that former Chair Bill Lundberg had tendered his letter of resignation to Governor Scott Walker. George Arimond had been seated immediately as a new “at-large” member due to the vacancy created by Lundberg’s departure. Arimond’s appointment must be approved by the Senate in the next legislative session but he serves as a full board member in the interim. Moore noted officer elections are required for the Chair and Vice-Chair positions due to Lundberg’s resignation and Moore’s decision to step down from the Vice-Chair role. She said the Personnel Committee, of which she serves as Chair, had met as the Nominating Committee to offer a slate of candidates for each position based on interest expressed by LWSRB members.

Moore then offered the names of Don Greenwood and Ron Leys as candidates for Chair. She thrice called for nominations from the floor. Hearing none, a motion to close nominations was made by Madison, seconded by Jerry Dorscheid. Ballots were distributed and the vote was tallied. Greenwood was elected Chair on a vote of 5-2 with two members absent.

Moore offered the names of Ron Leys and Fred Madison as candidates for Vice-Chair. She thrice called for nominations from the floor. Hearing none, a motion to close nominations was made by Dorscheid, seconded by Nice. Ballots were distributed and the vote was tallied. Madison was elected Vice-Chair on a vote of 4-3 with two members absent.

Cupp thanked Moore for her years of service as LWSRB Vice-Chair and for her leadership in that role. He noted the Executive Committee now will be comprised of Greenwood, Madison and Nice until regular elections are held in June of 2013. Greenwood then assumed the role as Chair.

Greenwood noted committees must be restructured due to the changes on the board. He encouraged persons wishing to change committees to contact him or Cupp by January 2nd when the Executive Committee will meet. Greenwood presented the 2013 meeting schedule for review. Cupp said the dates and meeting times (second Thursday of each month at 5:00 p.m.) are firm but the meeting locations could change to accommodate locally important agenda items. Under correspondence, Greenwood noted receipt of the letter from Lundberg resigning from the board and comments from the public on the frac sand mining applications for the Town of Bridgeport, Crawford County. A position paper on the topic authored by Greenwood and Moore also was included in the packets.

The Operations Committee report was presented by Chairman Dorscheid who noted four applications for non-metallic mining (frac sand mining) in the Town of Bridgeport, Crawford County, had been tabled at the October meeting. The co-applicant is Kyle Pattison of Pattison Sand Company (PSC) of Iowa. The landowners are Lee Pulda, Earl Pulda, Rod Marfilius and Alan Flansburgh. Cupp noted a tour of the Badger Mining Company operation near Taylor was undertaken on November 13th by LWSRB members Dorscheid, Brown and Arimond along with former member Bill Lundberg, Marsha Nachtigal, LWSRB Office Associate, and Cupp.

Cupp gave a PowerPoint presentation on the applications including a review of maps showing the Riverway boundary, applicant/landowner property boundaries, mine phase maps, digital images from the site and from the river and an aerial photograph showing GPS coordinates from the land and from the river highlighting visually sensitive areas. Cupp reviewed the board's strategic plan, applicable statutes and administrative code and gave his interpretation of the board's duties and responsibilities. He concluded with a recommendation for board approval of a permit for the non-metallic mining activities with the following conditions:

- *The excavation and any structure, equipment or stockpiled material may not be visible from the Wisconsin River during leaf-on conditions;*
- *The initial permit shall be for a period of 5 years with an annual review of the activity by the LWSRB;*
- *Extensions to the initial permit may be issued for periods up to 5 years;*
- *The landowner or his/her agent shall provide a written report and map or aerial photograph showing active mining areas and reclaimed areas;*
- *The LWSRB shall review any modifications to the plans, as submitted, for compliance with the applicable performance standards;*
- *The landowner shall notify the LWSRB upon initiation of the project; and,*
- *The activity shall comply with all other federal, state and local regulations.*

Cupp further recommended the following additional actions:

...the board should include the following requests in a cover letter to Pattison Sand Company (recognizing the board has no authority to require these actions under law):

- *Hours of operation should be limited to 6:00 a.m. to 6:00 p.m. Monday through Friday;*
- *Noise levels related to beepers on heavy equipment shall be reduced to the minimum db levels allowed under federal or state safety guidelines;*
- *If night operations occur, lighting should be dark sky compliant with lighting focused down and not out or up to minimize diffused lighting and reduce visibility of the site at night; and,*
- *Measures shall be taken to control dust and movement of particulates beyond the minimum standards of state/federal law to minimize adverse impacts on the Riverway.*

In addition, the board should authorize the Executive Director to send correspondence to Riverway municipalities again encouraging review, modification and/or adoption of local ordinances that establish a sufficient regulatory framework to protect public health, safety and welfare and quality of life for Riverway residents and visitors. The LWSRB may wish to request legislative action to further restrict non-metallic mining in the Riverway.

Cupp then introduced Edwina Kavanaugh from the Department of Natural Resources (DNR) Bureau of Legal Services. He thanked Kavanaugh and her colleagues for offering insights into Wisconsin's non-metallic mining laws and providing unofficial comments on other questions raised by board members and staff.

Greenwood asked about the apparent conflict between the statutes and administrative code. Kavanaugh said that, when there is a conflict, statutes "trump" code. Greenwood disagreed stating that in his experience in dealing with state agencies, there are cases where the code remains in effect even if statutes have changed. Greenwood suggested the board would be going out on a limb if the applications were considered at this time and said the statutes and code should be harmonized before proceeding. He said the LWSRB should work with the Legislature to change the law and noted the legislative intent for the Riverway's non-metallic mining statutes was to allow for small municipal quarries and sand pits to operate, not large scale industrial frac sand mining.

Leys said there is a clear conflict between the interpretation of the law and administrative code between staff and some board members. He suggested that the board seek independent legal counsel from the Department of Justice (DOJ) and/or Attorney General and asked Kavanaugh if that would be the proper agency from which to seek legal advice. Kavanaugh concurred and said a DOJ sub-unit is in place to offer counsel to boards and small agencies that do not have their own legal counsel. Leys also suggested that the board may not be able to change the law “after the fact” and that these applications likely must be considered under existing law.

Beth Regan of Pattison Sand Company (PSC) gave a PowerPoint presentation on the history of the company and the reasons for looking at the Bridgeport sites for a frac sand mining operation. She reviewed the phase maps and noted the Jordan and St. Peter’s sandstone formations are desirable for frac sand extraction. She touched on health and environmental considerations and gave a detailed review of the proposed operation. Kurt Oakes spoke on blasting. Regan then discussed the documents generated regarding archeological sites, noise, lighting, wetlands, truck traffic, storm water, erosion control and the reclamation plan. Moore asked about the noise and other impacts from blasting. Oakes said the impacts depend on the size of the blast but, in the proposal for Bridgeport, the noise and other effects will be minimal. Area residents would be notified prior to blasting and wells will be tested before the operation begins to obtain baseline data.

Public comment on the frac sand mining applications was heard.

Edie Ehlert, Crawford Stewardship Project, suggested the board hear from Dr. Rodolfo, a retired geologist, on frac sand mining and hydraulic fracturing. She said the Town of Bridgeport should take a strong stand on the conditional use permit and tightly regulate any operation. Ehlert said the legal issues should be resolved before the board moves forward. Ehlert cited the board’s mission statement and noted the area and the Riverway habitat will be changed forever if the project comes to fruition.

Michael Murphy said he is a resident of the Riverway and also works for PSC. He supports the applications and said good jobs will be created and cost of natural gas to consumers will be lower.

Chris Lehman said he is a local resident and works for PSC. He is an outdoorsman but has no fear that the mine will have adverse impacts on wildlife.

Chad Baush of Baush Trucking said he is a PSC subcontractor and noted PSC stresses safety. He said the mine would be good for the local economy.

Scott Zenz said he is a former PSC employee and noted the frac sand mining application can become an emotional issue. He said tourism will increase because of people interested in seeing the mine in operation.

Frederic Drenberg of Wauzeka said adequate efforts should be taken to assure groundwater is protected.

Aaron Marx said he works for PSC and discussed dust control and air quality monitoring. He said PSC is deeply concerned about air quality and employee safety.

Kathy Byrne of the Crawford Stewardship Project said the natural gas from fracking goes on the world market and is not just utilized in domestic markets. She said air quality monitoring must be done at the mine site and said DNR doesn’t have adequate staff to do the job effectively. She said data collected by operators is suspect. She noted the Ho-Chunk Nation has adopted a resolution in opposition to frac sand mining.

Thomas Regan of McGregor, Iowa, suggested the board tour the PSC site near Clayton to see reclamation and said mining is good for the local economy.

Timm Zumm of Spring Green, President of Friends of the Lower Wisconsin State Riverway (FLOW) thanked the board for the discussion and presentation and also thanked PSC for the information shared at the meeting. He said the board should continue fact gathering until all questions have been answered. He said the Riverway is priceless and outweighs any short-term economic gain from mining. Zumm said the value of the Riverway will only increase in the future as the number of special places is less. He said the ambiguity of the law should be straightened out before the board proceeds.

Linda Meadowcroft of Baraboo suggested the board will not be able to effectively monitor the mining operation with limited staff and a 92 mile corridor. She said the board's mission statement indicates the Riverway's natural values should be protected. Meadowcroft said an independent investigation of antiquities should be undertaken and suggested the current archeological study is insufficient. She said these sites must be better protected. She also questioned the ability to return the sites to productive agricultural lands.

Doug Jones of Spring Green said there is a tremendous amount of natural gas being wasted in the fracking process in North Dakota and suggested everyone stop for a moment, plan and think.

Roger Reynolds of Lone Rock said better monitoring of new archeological discoveries must be done. He expressed concern about lighting, noise and the natural character of the Riverway. He said all plans should be laid out in writing and noted the need to tread carefully since this is a precedent setting action by the board. He agreed that the legal questions should be ironed out before the board proceeds. He encouraged PSC to not just meet standards but to exceed the minimum standards and said the board should hear from more experts.

William Kean of Madison said he is concerned about short and long term effects on fishing and water quality.

Arnie Steele of Bridgeport said the rumble strips on Hwy. 60 will be loud with all the truck traffic and said he is concerned about human health impacts. He said the board should consider the viewshed from area bluffs, not just the river. He said the board should take its time and listen to the people.

Rod Marfilus, one of the co-applicants, said he had no choice about opting in or out of the Riverway. He said the next generation will take over the farm in the future. He said the board should approve the permit requests.

Harriet Behar of Gays Mills said the board is the steward of the river and should protect the eagles and the beauty of the river for current and future generations.

The board accepted additional written comments from persons in attendance.

Dorscheid noted the Operations Committee took no action on the permit applications. Leys then made a motion, seconded by Brown, to *"...seek legal advice from the Wisconsin Department of Justice on whether a prohibition on new non-metallic mining is still in force. If not, is the LWSRB required to issue a permit to the Pattison Sand Company if standard conditions are met regarding the visibility of the mine operation from the Wisconsin River when the leaves are on the deciduous trees?"*

Madison asked if this would mean that the board would delay action on the applications to which Leys replied in the affirmative. Madison agreed that clarification of statutes vs. administrative code is required. Leys also thanked Greenwood and Moore for the work they put in on the position paper distributed to the board. Madison said it was apparent that a great deal of thought and time was put into the document. Moore said legislative meetings should start sooner rather than later and said she supports the motion made by Leys. Greenwood agreed and said it is important to educate legislators on the topic. Madison noted the legislative intent did not consider

industrial scale mining associated with frac sand. Kavanaugh noted that, ultimately, the courts may decide the issue. Leys said he is concerned that other mining application will follow and that we need to change the pattern for the future. Greenwood reviewed his experience with the scenic byways program and the conflict between statutes and administrative code. Brown said he would like to see a reclamation site on PSC lands at some point. A vote on the motion was taken. **MOTION CARRIED.**

Dorscheid then discussed the permit application of Larry Sawyer for a timber harvest in the Town of Roxbury, Dane County. JC Gates is the consultant. A PowerPoint presentation was shown. Dorscheid said a field inspection was conducted by Cupp on December 10, 2012. Mr. Gates and Nick Morehouse, DNR Riverway Forester, also were present for the field inspection. Due to poor visibility, the various zones were not delineated. A selective harvest of merchantable hardwoods is planned. A diameter limit of 16 inches dbh or greater is intended for most trees. Some oak wilt pockets may be addressed. Diseased, storm damaged or other trees in poor health will be taken to improve the quality of the woodlot. No new roads will be constructed. The harvest will occur during the times when the leaves are off the deciduous trees and the ground is frozen or dry. An additional field inspection will be conducted when the trees are marked and weather conditions allow. The standard permit conditions for a general timber harvest permit would be applicable. Dorscheid made a motion, seconded by Leys, to approve issuance of a permit with the following conditions:

- The harvest shall comply with the basal area limits for the residual stand in the River Edge Zone and Riverview Zone, as detailed in Chapter NR 37, Wisconsin Administrative Code;
- In the River Edge Zone and Riverview Zone, all trees selected for harvest shall be appropriately marked and reviewed by the LWSRB for compliance with the applicable performance standards prior to initiation of the harvest;
- In the River Edge Zone and Riverview Zone, the harvest shall be limited to the times when the ground is frozen or dry and the leaves are off the deciduous trees;
- The LWSRB shall review the location and design of all new logging roads, if any, in the River Edge Zone and Riverview Zone;
- The new logging roads, if any, shall comply with the applicable performance standards regarding grade and erosion control and shall be re-seeded upon completion of the harvest;
- The LWSRB shall review the location and design of all small regeneration cuts, if any, in the Riverview Zone to assure compliance with the applicable performance standards;
- The River Edge Zone and Riverview Zone shall be delineated prior to initiation of the harvest, if necessary;
- The landowner or his/her agent shall notify the LWSRB within 10 working days upon completion of the harvest and, if necessary, the LWSRB shall conduct a post-harvest field inspection; and,
- The LWSRB shall review modification of the plans, as submitted, for compliance with the applicable performance standards.

MOTION CARRIED.

Under other business, Cupp said he is working with the Iowa County Zoning Department on a structure violation in the Town of Arena, Iowa County, off of Witwer Road. A PowerPoint presentation was shown that demonstrated a new deck had been added to a cottage located in the floodplain. Cupp said he had discussed the situation with the landowner and with Scott Godfrey, Director of Iowa County Planning and Development. The landowner is expected to seek a variance from the county. If granted, the LWSRB would consider issuance of a permit for modification of a structure. The site is not visible from the Wisconsin River during leaf-on conditions.

Cupp said he also learned there may be a similar minor violation in the floodplain near the Arena boat landing but he had not had sufficient time to investigate the matter.

Dorscheid reported the committee had met with officials from Vivid, Inc. regarding the Wintergreen ski lodge in the Town of Wyoming, Iowa County. Tree and vegetative removal for building maintenance purposes and vegetative removal for prairie restoration efforts were discussed. A formal application has not been presented as of yet.

Cupp said he issued a general permit to Thomas Kuczarski in the Town of Buena Vista, Richland County for modification of an existing structure. He said the Executive Committee had directed him to proceed with issuance of a permit. The activity involves enlarging an existing ground level deck. No visual impacts are expected.

The Budget Committee report was given by Chairman Nice who reviewed the status of the FY 13 budget.

The Personnel Committee report was given by Melody Moore who noted the annual performance evaluation of Marsha Nachtigal, Office Associate, had been completed by Cupp. Nachtigal received a "satisfactory to exceeds expectations" rating in all categories. She said Cupp had recommended the board pursue a discretionary merit compensation award for Nachtigal. Cupp complimented Nachtigal on her work and noted the extra effort put in with the frac sand mining applications. Moore then noted that forms for board members to use in the Executive Director annual performance evaluation process have been distributed and should be returned to her as soon as possible.

The Executive Director's report was given by Cupp who reviewed the materials in the board members' packets.

Under board members' business, Greenwood distributed a FAQ sheet regarding administrative rules.

The DNR report was given by Brian Hefty, DNR Riverway Manager, who said he hopes to have a new person hired soon for the Riverway. He said quarterly staff meetings regarding the Riverway have been useful.

There were no additional comments during the second public comment period.

A motion to adjourn until January 10th when the meeting will be held in Muscoda was made by Madison, seconded by Brown. **MOTION CARRIED.**

END

For further information, corrections, additions or deletions to the minutes, contact Mark Cupp, Executive Director, at (608) 739-3188 or 1-800-221-3792.

Minutes submitted by:

Mark E. Cupp, Executive Director
Lower Wisconsin State Riverway Board