

NATURAL RESOURCES COMMISSION

Fort Benjamin Harrison - The Garrison
6002 North Post Road, Indianapolis, Indiana

Minutes of January 18, 2006

MEMBERS PRESENT

Rick Cockrum, Chair
Jane Ann Stautz, Vice Chair
Kyle Hupfer, Secretary
Matthew T. Klein
Bryan Poynter
Chad Frahm
Richard Mangus
Mark Ahearn

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Ron McAhrn	Executive Office
Cheryl Hampton	Personnel
Linnea Petercheff	Fish and Wildlife
Samuel Purvis	Law Enforcement
Jomary Baller	Water

GUESTS PRESENT

Alan Hux
Brad Bueling

Rick Cockrum, Vice Chairman, called to order the regular meeting of the Natural Resources Commission at 10:10 a.m., EST, on January 18, 2006 at Fort Benjamin Harrison–The Garrison, 6002 North Post Road, Indianapolis, Indiana. With the presence of eight members, the Vice Chair observed a quorum.

Vice Chair Cockrum asked for comments regarding the proposed minutes of the Commission’s meeting of November 15, 2005. Brian Poynter indicated that he had one comment regarding the fee increase the Commission approved. “There was a reference made to oversight of the Commission on an ongoing regular routine.” He said the item was not modified, but he requested a notation be added to the official record. “The Commission would like to have oversight and timely reporting at each Commission meeting as we move forward to monitor each of the sections.” Poynter deferred to the Director Hupfer’s office and accounting staff as to “how that will happen. I think there was a recommendation of this Commission is given financial reporting at each Commission meeting as it pertains to fee increases so that we can track.”

Director Hupfer indicated the November minutes could be amended to reflect the Commission's request. He said there would sometimes be little or nothing to report. For example, today and typically in January there would be little that could be offered.

Vice Chair Cockrum asked whether reporting can be made at "every" Commission meeting, "or would that be too restrictive?" Poynter added, "I think that going historically forward the momentum out of that meeting and the discussion at that meeting will fade from memory. But I do think for a matter of public record, which is the minutes that we need to reflect that the Commission has asked for regular reporting." Poynter added that the Vice Chair Cocrkum made reference to "some accountability" during the November meeting. Cockrum indicated that part of the public testimony was accountability, and "it's this Commission's accountability."

The Vice Chair asked whether the Commission would want to "tie down" or specifically state frequency of reporting "at every meeting, regularly, periodic, timely, or quarterly. I'm trying to give a little bit of flexibility." Director Hupfer said a report could be prepared for the Commission's meetings in May, July, and September, "because we are going to have a good sense of things by May or July. We have such a small number now. We have seen no blip in sales. In fact, annual pass sales, which is the only thing going on right now, are ahead of where they were a year ago." Poynter asked that the November 2005 minutes reflect the Commission's request for reporting "however it gets worded."

Jane Ann Stautz moved to approve the minutes of November 15, 2005 with amendment to reflect the Commission's request for financial reporting regarding the consideration of approval of increase of fees. Those amendments are as follows:

Poynter suggested the Department present to the Commission reports of revenue ~~on a quarterly basis in 2006~~ for the Commission to retain accountability. "I would ask that this be an agenda item included at each meeting." **The Director agreed to provide reports at least four times annually, with the likely emphasis in meetings held during May, July and September.** Vice Chair Cockrum concurred. **By consensus, the members agreed to this approach.**

Brian Poynter seconded the motion. Upon a voice vote, the motion carried.

Election of Officers

Vice Chariman Cockrum opened the floor for nominations to elect officers.

Brian Poynter nominated Rick Cockrum as Chair, Jane Ann Stautz as Vice Chair, and Kyle Hupfer as Secretary. No other nominations were offered. Chad Frahm seconded the motion. Upon a voice vote, these officers were elected unanimously.

Chair Cockrum said, "The Chair is an honor", and thanked the members of the Commission. "I've been a member for several years, and one of the things that—while the members change over time—is very impressive is the quality of the Commission members, the professionalism, and dedication. It's an honor and privilege, and I am looking forward to working with you this year."

Director Hupfer reported that the House of Representatives Natural Resources Committee was also meeting today. The business of this Committee is critical to the functioning of the DNR and the Commission, so he might be required to leave the Commission meeting early. The Director reflected that the Commission agenda was unusually light, however, and his hope was to remain for the entire meeting.

John Davis, Deputy Director, congratulated Chair Cockrum on his election. He distributed a written report with the results of the state park deer reductions. "It compares the years past."

Davis said a ceremony was held to celebrate the “daylighting” of Dunes Creek at Indiana Dunes State Park. The creek formerly ran through a pipe under a parking lot. CZM and the Lake Michigan Coastal Program helped develop and fund the project. An immediate result is providing a more natural stream environment in the park, and there is also hope there will be an improvement of water quality where Dunes Creek enters Lake Michigan within the swimming beach. Davis said a poster was produced, as a part of the celebration, and copies were available to members of the Commission.

Ron McAhron also congratulated Chair Cockrum on his election. McAhron said, “We have continued, I am proud to say, compliance with our budget. We are on a positive track.” He announced that the DNR’s annual report would soon be available. “It will do a lot better job of highlighting accomplishments.”

Consideration of Recommendation by Hearing Officer for Report of the Natural Resources Commission with Respect to the “Petition for the Creation of the Eagle Ridge Conservancy District;” (Administrative Cause Number 05-171C (Porter Circuit Court 64C01-0506-MI-5160))

Stephen Lucas presented this item on behalf of Hearing Officer Sandra Jensen. Lucas noted that the proposed Eagle Ridge Conservancy District was “not controversial” and “very much on the lines of [a district] the Commission approved last meeting.” He said the Petitioner’s attorney, Alan Hux, was present to answer questions. Lucas added, “My understanding is there was no opposition to its formation.”

Alan Hux concurred that the proposed Eagle Ridge Conservancy district was not controversial. He indicated that the Clinton County Health Department and the Indiana State Department of Health “were behind” the formation of the proposed district. He reflected that the ISDH now urges the creation of a conservancy district or similar entity to provide for continuing accountability where wastewater treatment is to be performed with a wetlands and mounds system.

Chairman Cockrum reminded Commission members that it is “our statutory duty to certify to the courts that certain tests have been met.”

Jane Ann Stautz moved to approve the report and recommendations of the Hearing Officer regarding the Petition for Creation of the Eagle Ridge Conservancy District as its report to the Clinton Circuit Court. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

Consideration of Rule Processing, Report of Public Hearing, Comments, Response by the Department of Natural Resources, and Presentation for Final Adoption of Rule Amendments to 312 IAC 9 Governing Wild Animal Possession, Mute Swans, Ground Hogs, Deer, and Various Other Amendments to the Fish and Wildlife Rules (Administrative Cause Number 05-118D; LSA Document #04-215(F))

The Chair announced that there was a newspaper “notification problem” regarding the proposed amendments to the fish and wildlife rules. “Although if there is anyone from the public that came to comment, we can certainly take those, but we need to pull the item from the agenda for procedural reasons.” No member of the public expressed an interest in speaking. The Chair then withdrew the item with the expressed hope the item would be returned for next meeting’s agenda.

Consideration of Rule Processing, Report of Public Hearing and Comments, and Recommendation for Final Adoption of Amendments to 312 IAC 18-3-12 Governing the Larger Pine Shoot Beetle Quarantine Expansion to Dearborn County Indiana (Administrative Cause Number 05-114E; LSA #05-213(F))

Steve Lucas, Hearing Officer, presented this item. He explained the proposal was for final adoption. "It is a continuation of the expansion of the quarantine with respect to the larger pine shoot beetle." Lucas noted that consistent with discussions with Robert Waltz, State Entomologist, similar extensions are likely in the future. He said the proposal was not controversial, and it is "very much like extensions approved in the past by this Commission." Lucas recommended the Commission give the proposal final adoption.

Richard Mangus moved to give final adoption to the proposed amendments to 312 IAC 18-3-12 adding Dearborn County to the larger pine shoot beetle quarantine. Matthew Klein seconded the motion. Upon a voice vote, the motion carried.

Consideration of Recommendation for Preliminary Adoption of a New Rule Section to Assist in Implementation of an Aspect of Public Law 99-2005, Rules to Identify the Applicable Provisions of the Code of Judicial Conduct (Administrative Cause Number 05-137J)

Stephen Lucas presented this item. He said in 2005 Senate Enrolled Act 619 made several changes to the laws that govern conduct of administrative law judges that work for you and that work in the Office of Environmental Adjudication for proceedings initiated through IDEM. He said these amendments applied to these two offices "and to no one else."

Lucas said one of the amendments from SEA 619 placed the NRC administrative law judges and OEA administrative law judges together in that the two entities are now both governed by "applicable provisions" of the Code of Judicial Conduct. With the Code of Judicial Conduct, the Indiana Supreme Court controls conduct of the various circuit, superior and higher court judges in the State of Indiana. Lucas said the philosophy behind the legislation was "laudable and is at the same time, to some extent, putting a square peg in a round hole, because some of the things apply to circuit court judges that do not really apply to administrative law judges." He said this limitation is likely why the Indiana General Assembly limited application to the "applicable provisions" of the Code of Judicial Conduct.

Lucas said the legislation does not specify which of these rules are "applicable". As a result, the NRC administrative law judges met with OEA administrative law judges and agreed upon "what is hoped to be a draft to cause" similar rules of conduct to help "carry forth the legislative intent" in an understandable way. Lucas noted that because OEA's authority is "substantively different" from Commission authority, the current proposed rules would differ somewhat from OEA's proposal but would embody the same philosophies.

Lucas added, "This legislation was largely a result of suggestions that came from the Indiana State Bar Association, and particularly the Environmental Law Section of the State Bar." He said Senator Beverly Gard authored the legislation. "We asked both the State Bar and Senator Gard for perspectives on the rule proposals." He indicated that comments have not been received from the State Bar Association; however, Senator Beverly Gard responded by email on November 30, 2005. Lucas read the substantive portion of Senator Gard's response:

You are exactly correct in your assessment of the legislative intent with the phrase applicable provisions of the Code of Judicial Conduct. Your draft rule seems just fine to me, and I think it will clarify the issue for any that may raise the questions in the future. I appreciate your giving me the opportunity to look at this.

Lucas noted that it was possible that if the Commission authorized the proposal to move forward, public comments may be received that would generate changes. His hope was these would not "be radical departures from the draft, but we will hear from some people that have somewhat different ideas. So, it may come back to you to do some tweaking." Lucas added, "I think it's important that we go to a fully public forum so we can get those kinds of comments." He requested the Commission give preliminary

adoption to the proposal adding 312 IAC 3-1-2.5 to help identify the applicable provisions of the Code of Judicial Conduct in implementation of SEA 619.

Mark Ahearn moved to approve for preliminary adoption proposed 312 IAC 3-1-2.5 establishing standards to identify the applicable provisions of the Code of Judicial Conduct for the Commission's administrative law judges. Matthew Klein seconded the motion. Upon a voice vote, the motion carried.

Consideration of Recommendation for Preliminary Adoption of Non-Substantive Amendments to Update Cross-references and Correct Errors to Commission Rules (Administrative Cause Number 05-184A)

Stephen Lucas also presented this item. He explained that the rule proposal is “just housekeeping or cleaning up” of clerical errors, cross references where statutes may have changed, and other technical matters. “It’s a variety of purely housekeeping items, and I don’t think there is anything here that is substantive.” Lucas indicated the rule amendments were ready for consideration as to preliminary adoption.

Jane Ann Stautz moved to give preliminary adoption, as recommended, to rule amendments correcting and updating miscellaneous provisions of 312 IAC. Chad Frahm seconded the motion. Upon a voice vote, the motion carried.

Standing Committees

The Chair reported one of his responsibilities was the appointment of committees. Currently, the Commission has two standing committees. These are the Personnel Committee and the AOPA Committee.

Rick Cockrum said the Commission is statutorily required to approve certain property manager positions. “Historically, we have had a couple of Commission members serve on the Personnel Committee on an ad hoc basis to assist the Department in the selection process.” He said that Jane Ann Stautz and he have served on the committee in the past. The Chair asked Bryan Poynter if he would be willing to constitute the Personnel Committee, with the understanding that another member or members could be appointed in the future if the demands of the position become excessive. Poynter agreed to do so.

The Chair asked Steve Lucas to provide background on the AOPA Committee. Lucas responded that the AOPA Committee was established by rule, and it addresses a variety of legal issues at the administrative conclusion of an adjudication. Most often, the AOPA Committee hears oral argument on “objections” to a nonfinal order by an administrative law judge. The Commission also adopted a nonrule policy document concerning the AOPA Committee, and this document emphasizes the need for attorney membership. Lucas said the “objections” arguments “could be pretty legalistic” and may focus on elements of AOPA or the Trial Rules, such as the requirements for summary judgment. “It kind of acts as a court of appeals might act following a decision by a trial court.” Michael Kiley, Jane Ann Stautz and Linda Runkle (as the proxy for Thomas Easterly) have served previously. Lucas said he yesterday emailed Jane and Linda to ask if they would be willing and able to continue, if appointed by the new Chair. He said a third member needed to be appointed to replace Mike Kiley, and he hoped the member would be an attorney. The third member could be a Commission member or the proxy for a Commission member. Lucas added that the process allowed for the addition of an additional member to hear a particular dispute, if the dispute seemed likely to require expertise that was special to a Commission member, whether or not an attorney. Lucas said there were no pending matters requiring the attention of the AOPA Committee, but he said two important decisions rendered last week by the NRC administrative law judges seemed likely to generate “objections” by one or more of the parties.

Chairman Cockrum asked Jane Ann Stautz if she was agreeable to continuing on the AOPA Committee. She responded that she was. Matt Klein indicated he believed an attorney proxy from IDEM would likely continue to participate. The Chair expressed an intention to appoint a three-person committee prior to the next Commission meeting and to announce those appointments.

Adjournment

Jane Ann Stautz moved to adjourn the meeting. Matthew Klein seconded the motion. Upon a voice vote, the motion carried. The meeting adjourned at 10:33 a.m., EST.

Next Meeting: March 21, 2006, (afternoon meeting)