

Minutes of the June 23, 2004

Joint Meeting of the Advisory Council for the Bureau of Water and Resource Regulation and the Advisory Council for the Bureau of Lands and Cultural Resources

Members Present for the Advisory Council for the Bureau of Water and Resource Regulation

Thomas Fischer
Charles Amlaner, Jr.
Donald Mann
William Pippenger
Donald VanMeter

Members Present for the Advisory Council for the Bureau of Lands and Cultural Resources

Jerry Miller
Jeffrey Gore
Clarence Long
Lester Ponder
Meredith Richmond
Bob Scherle

Call to Order

Jerry Miller, Chair of the Advisory Council for the Bureau of Lands and Cultural Resources, called the meeting to order at approximately 10:05 a.m. A quorum was not present for either the Advisory Council for the Bureau of Water and Resource Regulation or the Advisory Council for the Bureau of Lands and Cultural Resources. Their actions are unofficial, and the perspectives expressed are those of individual Advisory Council members.

Approval of the Minutes of Joint Meeting of April 22, 2004

William Pippenger moved to approve the minutes of the April 22, 2004 joint meeting of the Advisory Councils. Charles Amlaner seconded the motion. Upon a voice vote, the motion carried.

Report of Proceedings of the Natural Resources Commission

Jerry Miller reported upon key agenda items considered during the May 18, 2004 meeting of the Natural Resources Commission. Paul Ehret also reported regarding the Commission's preliminary adoption of the rule governing group pier licensing. He also

added that the Lake Management Workgroup was reformed as a “condensed” membership.

Consideration of Recommendation for Preliminary Adoption of Rule Amendments to Organized Activities and Fishing Tournaments on Sylvan Lake in Noble County; Administrative Cause No. 04-038L

Samuel Purvis, Indiana Boating Law Administrator, Division of Law Enforcement presented this item. He said a petition from the Town Board of Rome City initiated a rule proposal to establish requirements for organized boating activity on Sylvan Lake in Noble County. He said David Abbott, member of the Rome City Town Board, was also present. Purvis added that area bass organizations and other sports anglers “agreed that there needs to be some regulation of tournaments” on Sylvan Lake.

Purvis noted that the Division of Law Enforcement met several times with the representatives from Rome City and tournament organizers, and these meetings produced the rule proposal. Sylvan Lake contains about 660 acres, with most tournaments conducted during the week rather than on weekends. Purvis also noted that historically no tournaments on Sylvan Lake have been held on holiday weekends.

Purvis pointed out an error with enumeration in 312 IAC 2-4-14(b). He said the second designation “(1)” should be amended to read “(3)”. With this correction, Purvis requested that subsection (b)(3) not be recommended for preliminary adoption, and he suggested this language should be removed from the proposal. Purvis explained that the Commission recommended that holiday weekends not be excluded from open dates for organized boating activity. “It would be our responsibility to look at those applications to decide what events ought to take place.”

Charles Amlaner inquired of the types of boat activity on Sylvan Lake. Purvis said Sylvan Lake “is a smaller lake so any activity seems like a lot.” He said the Sylvan Lake community mainly boats on weekdays, because most keep permanent residence at the lake. Purvis noted that Rome City employs its own boating patrol, and “they keep things pretty much in order.” He also noted that Sylvan Lake is an “excellent fishery. It’s one of the best fishing lakes in the state.”

Dick Mercier, representing the Indiana Sportsman’s Roundtable, commented favorably on the rule proposal, with the exception of the exclusion of holidays proposed in 312 IAC 2-4-14(b)(3). “Our objection to including that is when we come to the next lake are we going to want to include more holidays. As the point has been made here, other events are not scheduled on holidays, or refused to be scheduled on holidays so why should bass tournaments not be scheduled.” Purvis pointed out that 312 IAC 2-4-14(b)(3) was recommended by the Division of Law Enforcement to be removed from the instant proposal. Ehret asked whether the Division of Law Enforcement had the ability to not approve a license for a fishing tournament on a weekend. Purvis said, “Our intention all along was any activity that is a major boating activity—anything outside of a boat race or water ski event—that wasn’t covered before is covered now. If it is a boating activity it

is going to require a permit, and the Division of Law Enforcement has the ability to not schedule a boating event the same day there is a swimming event across a lake.”

Purvis suggested that in 312 IAC 2-4-14(b)(1), “May 1” be amended to “April 30.” With this amendment and the removal of 312 IAC 2-4-14(b)(3), he asked the Advisory Councils to recommend approval of the amended rule proposal.

David White said he worked for the Lake Sylvan Improvement Association as a Wetlands Watershed Coordinator. He said Sylvan Lake was constructed in the 1830s as a basin to hold water for extension of the Erie Canal. The Army Corps of Engineers and DNR required a new levee and dam for Sylvan Lake. “Because the project used state and federal funds, we also had to have a new public access.” He said the new boat access has caused an increase in the number of bass anglers throughout the year. White said the “locals hoped” the rule proposal would “reverse this trend.” He also commented that he was “really happy to see that regulations are in place to regulate somewhat. I am not as happy that you are considering removing the three holiday weekends.”

Charles Amlaner moved to recommend Commission approval of the rule proposal with staff’s recommended amendments. William Pippenger seconded the motion. Upon a voice vote, the motion carried.

Consideration of Recommendation for Preliminary Adoption of Rule Amendments to 312 IAC 4-6-6 Governing Insurance Board for the Division of Law Enforcement; Administrative Cause No. 04-115L

Samuel Purvis also presented this item. He explained that the proposed rule amendment was a “house keeping issue to change the rules to match current practice.” Purvis said Director Bruce Clear currently chairs the Division of Law Enforcement’s Insurance Board. He said the chair is now elected according to the bylaws. “It gives the power to the Board to elect a chairman as a working committee.” Purvis also noted that the rule section is amended to reflect the official title of the Board.

William Pippenger moved to recommend Commission approval of amendments to 312 IAC 4-6-6. Donald Vanmeter seconded the motion. Upon a voice vote, the motion carried.

Consideration of Recommendation for Preliminary Adoption of Rule Amendments to 312 IAC 11-2-5 to Define Bulkhead Seawalls to Include Timber and Railroad Tie Seawalls; Administrative Cause No. 04-116W

George Bowman, Assistant Director, Division of Water, presented this item. He said the proposal revises the definition of bulkhead seawall that would “in certain instances” include timber or railroad tie seawalls. He explained that the current definition of ‘bulkhead seawall’ was an *‘impervious vertical or near vertical shoreline protection structure,’* and Bowman added that the Department agrees the definition includes concrete or steel piling seawalls. Bowman, however, explained that there was a

difference of opinion as to whether a timber or railroad seawall—due to voids between the timbers—meet the definition of ‘*impervious*.’ He said that by engineering standards a bulkhead seawall is “something that protects the shoreline and reflects wave energy. A timber seawall does, in fact, do that.”

Bowman said the rule proposal establishes criteria for a timber or railroad tie seawall to qualify as a bulkhead seawall. He emphasized that new timber and railroad seawalls would not be authorized. Bowman explained that an issue arises when an applicant requests to replace the existing timber seawall with an approved material. “Currently, a ‘developed area’ is the only place where you can put concrete or steel sheet piling with less than 250 feet between existing seawalls.” He said some timber seawalls were permitted previous to 1991 that are longer than 250, and areas more than 250 feet between concrete and steel sheet piling seawalls are now considered areas of ‘special concern.’ “The only thing you can put in those areas is glacial stone or bioengineered materials.” Bowman said the proposal would allow an applicant to replace an existing timber or railroad bulkhead seawall with approved materials.

David White said he searched the Internet regarding railroad ties and the “extreme toxicity” of creosote. He provided Council members with a portion of his research results. “I am very happy this is not being considered, not even for replacement.” White suggested that DNR review existing timber and railroad seawalls along the lakes and begin to remove the seawalls to prevent further leaching of toxins.

Donald VanMeter motioned to recommend Commission approval of amendments to 312 IAC 11-2-5 as presented. Charles Amlaner seconded the motion. Upon a voice vote, the motion carried.

Consideration of Recommendation for Approval of an Annual Vehicle Fee for Redbird State Riding Area

Emily Kress, Director of the Division of Outdoor Recreation, introduced this item. She said the riding facility opened June 2003. The Division of Outdoor Recreation now requests recommendation for approval of an annual vehicle fee, which is “something the constituents, the riding groups, have also asked for.” Kress noted that Roy Garrett, President of the Redbird Riding Association, was also present.

Kress then introduced Nila Armstrong. Armstrong provided the members of the Councils with a copy of the June 7, 2003 *Opening Ceremony* program, photographs of the area, and a user statistic sheet. She stated that the riding area was open on Saturdays and Sundays last fall, but expanded to Fridays this year.

Armstrong reported that to date 1,468 vehicles have passed through the gates, and the number of passengers in SUVs totaled 483. She said currently there is a \$10 daily charge per vehicle, with total collection since opening of \$14,680. Armstrong said the riding area is planned to be open 141 days in 2004. She explained that the annual vehicle fee

for 2005 would be set at \$175; however, with only 65 days left in the 2004 riding season, the 2004 annual vehicle fee would be set at \$100. "The users are happy with this."

Armstrong said the Redbird Riding Area has not been heavily publicized, because work is ongoing at the property. She requested recommendation of approval of the annual vehicle fee of \$100 for 2004 and a \$175 fee starting in 2005. Donald Mann commented that there were more users at the Pike County property where boundaries are not marked, than at the Redbird State Riding Area. He said users of the Pike County property have trespassed onto his property. "It is a problem. I really encourage you to look into that." Kress answered, "The Division of Outdoor Recreation has a total of 13 people, and this is our first foray into property management." She said that DNR is aware of the problems and is working to address the issues. Kress thanked Mann for expressing his concerns.

Ehret asked whether there were user capacity concerns at the Redbird State Riding Area. Armstrong said there have been discussions on user capacity; however, more time is needed to review the capacity issue.

Donald Mann motioned to recommend Commission approval of a \$100 annual vehicle fee for the remaining 2004 riding season, and a 2005 annual vehicle fee of \$175. Donald VanMeter seconded the motion. Upon a voice vote, the motion carried.

Consideration of Recommendation for Approval of Amendments to Information Bulletin #2, Roster of Indiana Animals and Plants that are Extirpated, Endangered, Threatened, or Rare; Administrative Cause No. 99-101A (Information Bulletin #2)

John Bacone, Director of the Division of Nature Preserves, presented this item. He explained the ROSTER OF INDIANA ANIMALS AND PLANTS THAT ARE EXTIRPATED, ENDANGERED, AND THREATENED OR RARE supercedes the previous publication, and the Roster has been updated to include new species. "It is intended to help conserve these rare species by promoting their awareness and also helping to promote intelligent land use decisions." He said the updated Roster represents the "best available" information that has been gathered from various experts in the specie categories.

Bacone said the Division of Fish and Wildlife is responsible for the animal listing except the insect category, which is overseen by the Division of Entomology and Plant Pathology and the Division of Nature Preserves. He said advisory committees to the Division of Fish and Wildlife have contributed to the list. "You can see that this year the list is pretty extensive, because insects have been added. We have been able to get in touch with a number of experts in a lot of the insect categories from Purdue, paid experts, and peri-insects experts in the Chicago region."

Meredith Richmond asked whether a schedule of revision has been set for the Roster. Bacone said he was not aware of a schedule of revision; however, he noted that the technical advisory committees for animals meet periodically. "We are trying to force ourselves through the exercise, regarding plants, every three years." He noted that as

more experts spend time in the field, “We end up finding new species and also finding more locations, which allows us to corroborate or take them off the list.”

Charles Amlaner requested clarification of the environmental review coordinator. Discussions determined that the listing of the “Environmental Review Coordinator” cited in the Roster should be amended to read “Environmental Unit Supervisor,” which is located within the Division of Fish and Wildlife. Amlaner also inquired whether the list of federally endangered species was also included. Bacone said Indiana statute covers invertebrates, mollusks, and crustaceans in Indiana. “There is no state law protecting plants and insects. So, this is more considered biology advice. Anything that is federally listed is automatically incorporated.” He also noted that there were “a lot” of animals listed that are not on the federal endangered list.

Donald Mann asked whether at a previous meeting it was determined that the green tree frog was endangered in Binford County, and also asked to what extent “alien” species were included in the Roster. Bacone said there should not be any alien species on the list. Mann noted that the green tree frog is only found as far north as Tennessee. Bacone said, “That would be a discovery that is actually a range extension, but it just wasn’t known in Indiana until someone discovered it and the habitat.” He said the green tree frog is not considered an invasive exotic.

Charles Amlaner moved to recommend Commission approval of amendments to Information Bulletin #2, ROSTER OF INDIANA ANIMALS AND PLANTS THAT ARE EXTIRPATED, ENDANGERED, THREATENED, OR RARE. Clarence Long seconded the motion. Upon a voice vote, the motion carried.

Consideration of a Request by The Heirs of Miles and Tobias Huff for an Easement for an Access Road for Ingress and Egress Across Ferdinand State Forest

John Friedrich from the Division of Forestry presented this item. He provided members of the Councils with color maps and photographs of the area. Friedrich explained that the heirs of Miles and Tobias Huff own two properties—a 40-acre parcel and an 80-acre parcel—that are “disjointed” by Ferdinand State Forest. He said the Huff heirs requested a 2,575-foot easement across an existing fire road in Ferdinand State Forest to gain access to the 80-acre property. He said the 40-acre parcel is accessed via an existing public road; however, the petitioners cannot access, for recreational purposes, the 80-acre parcel.

Friedrich said the Huff heirs have agreed to pay a compensation of \$10,300, which follows the Natural Resources Commission compensation guidelines. He said a representative of the family, Sandy Mason, was also present. Friedrich said the Division of Forestry recommended approval of the easement request. William Pippenger asked that since the easement utilizes an existing fire lane, was language incorporated that would restrict “stopping or parking” on the fire lane. “40 years from now following generations may not remember.” Friedrich said restriction language could be included.

Pippenger suggested language be incorporated that the fire lane be “kept clear” with “no parking and no stopping.”

William Pippenger moved to recommend Commission approval of the easement to Huff heirs with the inclusion of the fire lane restriction language. Donald VanMeter seconded the motion. Upon a voice vote, the motion carried.

Consideration of a request by Crawford County Water Company, Inc. for a Long-term Easement and a Temporary Construction Easement for Installation, Maintenance, and Use of an Underground 14-inch Water Main via a Utility Corridor for the Transportation of Water Across Harrison-Crawford State Forest

John Friedrich also presented this item. He provided the Councils with color maps and area photographs. Friedrich stated that the Crawford County Water Company requested an easement to install a 14-inch water main from the town of Leavenworth up to the junction of State Road 66 with Interstate 64. He said the 14-inch water main would be installed across two county roads running through Harrison-Crawford State Forest. “This is about a \$2.6 million project to bring water to the Carefree area.”

Friedrich said a large portion of the Harrison-Crawford State Forest is within the Leavenworth Barrens Nature Preserve. He said Division of Forestry has consulted with the Division of Nature Preserves regarding environmental impacts. Friedrich said that the Division of Nature Preserves “is pretty comfortable with what we worked out with the engineering firm as far as restrictions when construction gets close to the nature preserve as far as sensitivity of some of the plants.” He noted, however, the engineering firm requested approval of the easement without compensation to the Department. “For that reason, the Division of Forestry has recommended denial of this request.”

Donald VanMeter said, “Based upon the motion we just passed for the other easement, I think it is pretty clear that we are not going to give it to them.”

Brian Bullock, representative of Midwestern Engineers, Inc., noted that Crawford County Water is a rural not-for-profit water company that serves approximately 850 customers, most of which are residential customers. He said the project is financed entirely with a loan through the USDA Rural Development Agency.

Bullock said numerous individual landowners have granted easements for this project without compensation. “Any compensation that they pay out will basically be added to the project costs, which will increase the loans and will be passed onto their existing customers. That’s the reason behind our request.” He noted that the water line would be completely located in the road right-of-way, which was a requirement by the Division of Forestry. “We do not have any other issues with the easement request at all.” He also added that the project does cross a nature preserve. “We are sensitive to that.” Bullock said the relocating the water main in the road right-of-way increased the project costs by approximately \$20,000.

Charles Amlaner said, “It looks like we have a definite impasse. We have a difficulty, in that we need to extract a small amount of funding to compensate for moving across this land. What if you re-route and actually skirt the property in question?” Donald Mann asked whether the existing 6-inch main easement could be utilized. Bullock said other utilities exist through the easement and there was not adequate space available for this project.

Meredith Richmond said the 14-inch line would seem to encourage development. “Maybe look at having some of the developers pick up some of the cost.” Bullock said the need for the service is already there without the development. The members of the Advisory Councils continued discussion on alternative project routes.

Thomas Fischer inquired of the habitat of the nature preserve. Bacone said the Leavenworth Barrens Nature Preserve “pretty much” resembles a southern Indiana prairie—open grasses and flowering plants with some small scattered trees and shrubs. Bacone noted that the project is located in the road right-of-way so “it isn’t a take of the nature preserve. There is not a concern about taking the nature preserve. In fact, we have been working on appropriate reseeding mixes. We don’t feel this project will hurt the nature preserve.”

Bullock said that with easement compensations and high costs of construction, this type of project would not be feasible. Amlaner said, “This is a different form of easement. You are moving across protected land.” Bullock added that the compensation of \$4.38 per foot was “very high” for Crawford County, and asked whether the Department would “entertain any other way to determine compensation?” Friedrich said the requested compensation follows the Commission’s guidelines. Paul Ehret asked whether compensation is determined by a fixed formula or whether the amount reflects local circumstances. Friedrich said the compensation was a fixed amount.

William Pippenger moved to recommend Commission approval of the easement on receipt of compensation. Bob Scherle seconded the motion. Upon a voice vote the motion carried.

Walk-on Information Item

Eric Myers, Executive Director of the Indiana Natural Resources Foundation, updated the members of the Councils that the Foundation has supported numerous projects since its formation, including funding for the marketing of the environmental license plate. He said discussions are ongoing regarding a proposal to expand the mission and scope of the Foundation to support conservation work by including community foundations, local park departments, and land trusts. Myers said a task force has been formed to further review the proposal, which will be holding several regional meetings in the coming months. He said the General Assembly created the Foundation as a Section 115 (tax-exempt governmental entity); however, the task force will review the possibility of restructuring as a “true” 501(c)(3) not-for-profit entity.

ADJOURNMENT:

The meeting adjourned at 11:30 a.m.

NEXT MEETING

The next meeting was scheduled for August 17, 2004 at a location to be announced.