

**MINUTES OF THE NOVEMBER 9, 2011 BOARD WORKSHOP – DISCUSSION OF  
CURRENT REGULATORY FRAMEWORK FOR SHORELINE AND FLOODPLAIN  
REGULATIONS IN THE CLFLWD  
COMFORT LAKE -FOREST LAKE WATERSHED DISTRICT**

**Wednesday, November 9, 2011  
6:00 pm**

**Call to Order**

The President called the November 9, 2011 CLFLWD Workshop to order at 6:00 p.m. at the Forest Lake City Offices, 220 North Lake Street, Forest Lake, Minnesota

Present: President Richard Damchik, Vice President Jackie Anderson, Treasurer John Lynch, Secretary Wayne Moe, Manager Jon Spence.

Absent: None

Staff: Doug Thomas and Chuck Holtman (Smith Partners)

Others: Mark Lobermeier (City of Wyoming)

**Presentation of staff memo on oversight of shoreline work**

Attorney Holtman gave an overview of the staff memo that was included with the meeting agenda. He noted that the memo reflects the purpose of tonight's discussion based on conversations that he had with Administrator Thomas. The memo frames the discussion by two basic questions which are 1) how far and to what extent the District wants its own regulation to extend versus leaving some areas of regulation to the local units of government and the DNR, where there is similar regulation, and 2) what kind of activities does the district want to engage in outside of implementing its own regulatory authority. He then pointed out that the memo is specifically focused on shoreline work but it can be extended to other areas of regulation such as floodplain.

As to the question of self regulation even if another jurisdiction regulates he noted three things for consideration including 1) self regulation allows for control of the actual standards, 2) unless you have your own requirements you cannot enforce, and 3) allows one to have the ability to recover district costs. He then mentioned the underlying tension is in not duplicating what others are already doing and pointed out that this discussion had taken place back in 2007 & 2008 during development of the District's current rules and regulations, and with respect to shoreline activities the District came down on the side of not duplicating.

Attorney Holtman then discussed under what conditions the substantive standards that are in our rule apply and the connection to the DNR's Permitting and the provisions in District rule which describe when the District would require permits. He also described the conditions related to floodplain alteration and the conditions when the District would require a separate permit.

Attorney Holtman then went through the range of options that were presented in the memo and acknowledged that when it comes to enforcement the District has the least powerful tools available as compared to municipal and DNR authorities.

Manager Lynch commented that if he is reading things correctly the DNR has the biggest hammer. Attorney Holtman commented that yes they do but that they are limited in that they must use a cease and desist order process, but having a conservation officer involved can be a big influence by itself.

Manager Anderson commented that the point is we have good rules and our work and cooperation with communities has been good so what are the things we can do to avoid the situation that took place this summer on Comfort Lake. She noted that she thought the idea of a formalized agreement was worth looking at and that we also need to figure out the network of who to contact, from a citizen perspective, especially when work occurs at night and over the weekend. She pointed out how local and state staffs are getting more spread and that since the District has expertise in the areas of shoreland and floodplain we need to make this available as another way of making sure our rules are being applied.

Administrator Thomas commented that these were the very issues that he and Attorney Holtman were trying to respond to in preparation of the options in the memo. The idea of listing options was to put side boards on what the District can do. He also described what he felt were the kind of things that would be included in a cooperative agreement. He then asked Mark Lobermeier, who sits on the City of Wyoming Planning Commission to comment on the discussion that the Wyoming Planning Commission recently had regarding the violation on Comfort Lake. Mr. Lobermeier commented that after getting an overview of the situation from City staff the Commission looked at their ordinance language, identified some areas of the ordinance that probably need to be changed, and discussed the City's development of their Local Water Management Plan in relation to the need for more coordination that is needed as illustrated by the violation that took place. When asked by Administrator Thomas if he thought that the Commission would support a more formal cooperative agreement setting forth how the City and District could work better together in the future he responded that the Commission did discuss the idea and thought that it would be beneficial.

Manager Anderson wanted to make sure that we and others do not need to view this as a conflict between organizations. She also commented on the importance of the upcoming revisions of Local Surface Water Management Plans by the cities and that it is paramount that we look to that process to establish uniformity between our rules and those of the cities. She also commented on how the City of Forest Lake operates which is to give deference to the watershed district rules and regulations and will not issue a permit until the applicant has demonstrated that they are meeting the watershed district rules and used RCWD as an example of this.

Manager Spence, speaking about the idea of a cooperative agreement, asked the question of how this would have worked with Mr. Mastell if we had an agreement. Administrator Thomas commented that the likelihood of a violation, in his opinion, would have been less in that an agreement could have created a structured process which would have included joint notification, mandatory pre-permit site visit, adherence to the required permit submittal requirements, and

inspections during construction. Administrator Thomas commented that it made sense to him to have a two part process with the first being to work on developing cooperative agreements and then if that does not work then pursue the idea of a general permit with the DNR.

Manager Moe commented about a situation in Scandia where the City was aware of a violation but was not willing to aggressively enforce its own ordinance. Administrator Thomas asked about the method that a City can be sued for not carrying out their responsibility. Attorney Holtman commented that enforcement is within the discretion of the enforcement authority and that it is always better if the District and City were to work together to enforce a violation, especially if it involves going to court, if the goal is to demonstrate to others in the community that violations will be taken seriously.

Manager Anderson commented on the strong support from the cities during the formation of the watershed district and that any efforts to improve the coordination with them on carrying out rules and regulations, including inspections and enforcement should be thought of the same way. She indicated that she supported pursuing the first option.

President Damchik left for another a meeting and turned over the gavel to Vice President Anderson.

After some additional discussion about developing cooperative agreements and the future possibility of a DNR general permit it was the consensus of the managers that they would like staff to pursue working with the cities to develop cooperative agreements. Administrator Thomas asked Attorney Holtman if a formal motion or resolution was needed at the next meeting regarding the direction that the Board is supporting. Attorney Holtman indicated that since the direction is only for staff to begin working on this formal board action is not needed at this time. The question was asked if these agreements could be broad enough to cover other aspects of our rule such as floodplain and erosion and sediment control. Administrator Thomas commented that yes they can and that the discussions he will have with the cities will keep this in mind.

Administrator Thomas summarized that the direction staff will take is to first work on drafting a template for a cooperative agreement and then work with the cities and board of managers to refine it over the winter with a goal of having agreements in place by the spring of 2012 and delay the idea of seeking a general permit from the DNR until after we see what happens with implementing cooperative agreements.

The Board concurred that this was the approach that they support and directed staff to begin working on it.

## **Adjournment**

Motion to adjourn the November 9, 2011 Board Workshop at 7:00 p.m. was made by Manager Spence and seconded by Manager Moe. Discussion. Upon vote, the motion passed.

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Wayne S. Moe, Secretary