



**MINUTES
DEVILS LAKE WATER IMPROVEMENT DISTRICT
REGULAR MEETING**

DLWID OFFICE

May 6, 2010

6:00 P.M.

PRESENT: Randy Weldon
Jack Strayer
Brian Green
Dave Skirvin

ABSENT: Joe Barnes

AUDIENCE: Doug Pirie, Donna Elsasser, Don Sell, Bill Pigott,
Mark Christie, Bill Sexton, Keith Bowden

STAFF: Paul Robertson
Seth Lenaerts, RARE Program

MEDIA: None

Green called the meeting to order at 6:00 p.m.

Minutes of previous meeting

Green moved and Strayer seconded approving the Minutes from April.

Vote: Unanimous. Motion carried.

Financial Report

Robertson reported no changes to the report.

Strayer asked for details on Capital One credit card—the meter, gas, stamps, cyanobacteria conference expenses and miscellaneous.

Legal fees listed were attorney's fees for creation of a contract for Bill Sexton.

Strayer moved for approval of financial report and Green seconded.

Vote: Unanimous. Motion carried.

Public Comment on Agenda Items

Bill Sexton asked if anyone had noted any up or down issues regarding lake levels. It is currently at 9.5. Green asked if Sexton was recommending any changes. Sexton responded, "No." He just wanted to confirm that everyone was okay with current levels. Weldon stated that they were within the range of 9.3 to 9.5.

Elsasser (audience) reported that she noted a rise of the lake on the north end during recent rains. Sexton responded that there is quite a lot of drainage going on, but it remains within the 9.3 and 9.5 ranges. Sexton recommended checking the gage to see if it is accurate. Discussion ensued regarding accuracy of the gage. Weldon said he thinks there is up to a two-inch difference in measurements.

Robertson responded that there is 1,360 cubic feet of water at 9.35 feet above sea level.

Unfinished Business

Lake Level

See above discussion. The dam was installed and the lake level remains at between 9.3 and 9.5 range. Discussion determined that it might be best to retain the lake at that level without having to go through pulsing through the end of May. At the end of May, it will run with no obstruction to fish.

Skirvin reported that someone sent him an e-mail about the canal. He feels there are no water depth issues. In the back, there is a depth of 40 inches. In the channel, there was five feet of water. The area is heavily silted with muck and it does get stirred up. Horseshoe Bay is another area that he has not had a chance to measure. It is similar to Thompson Creek. There is a plateau with six inches of water. Near the Blue Heron, there was six feet of water at the mooring station.

Weldon said someone he talked to recently complained because of lost shoreline. He plans to try to lower his property taxes and feels that this will provide leverage for the Board to lower the lake level or he might consider possible litigation for loss of property. Weldon said that if this person sues and others learn of it, it could prove costly to the District. Last year people said they were happy with 9.24. In winter, the lake most often holds at 9 feet. With rain it goes back up. The Board needs to do what it can to protect the shoreline.

Mark Christie: He thought the maximum impound amount was going to be 9.5. How did the consideration change to dropping it to 9 feet?

Skirvin replied that all measurements have a baseline of 9 feet for purposes of discussion. Christie said discussions appear to be changing about where the level should be.

Skirvin: We are having a discussion. We are not discussing changing the level. The discussion of two meetings ago was how to manage the dam.

Discussion continued regarding lake level.

Pigott said he was not aware of a change in lake level being considered.

Green said that 9 feet is a more favorable level for discussion.

Robertson said that since the '40's, the water level has been adjusted.

Strayer said his dock was built for 10 feet of water.

Weldon said people thought the lake was going to drop and that caused some concern about 9 feet. He doesn't understand why people get upset about 9 feet when it is eroding and flooding at over 9 feet.

Green said the lake level needs to be discussed because it is on the agenda.

Weldon said the sandbar in the river acts as a dam. When it gets back to 8.5 when the rains subside, it hangs there.

Robertson asked if the Board wanted to consider any action on this issue.

Strayer said he would like to see it held at the maximum height for the summer.

Robertson said perhaps it would be a good idea to seek legal counsel regarding any liabilities re access to the elderly.

Green replied that he did not believe there is a legal issue. The Board is considering pros and cons of issues and cannot be held responsible for damages if the issue is evaluated carefully and good judgment is used to consider a level that the Board feels is in the best interest of the lake.

Strayer said that if the Board were ever to be sued, it would seek for a dismissal.

Green said, "You just have to hope that people don't want to waste money."

He encouraged a Board member to make a motion if they so desired so that the agenda could move on.

Skirvin suggested Robertson perform surveys in the next few days so that the Board could determine if they wanted to make changes to the level during the summer. There might be other areas of the lake that are impacted.

Green reminded the Board and audience that decisions made a couple of months ago could be changed if new information precipitated it.

Skirvin stated that if the dam were pulsed at 9.3, they should be certain that people were not being impacted negatively. He said that the residents in Thompson Creek were concerned about not being able to use their docks when the water is at 9 feet. Additional data points need to be added for June. He continued that there is a shelf in front of the last two properties on the Canal, whether the level is at 9.0 or 9.5.

Pirie said his neighbors cannot use their dock when the lake level is below 9.5.

Discussion continued on whether Pirie could use his own boats and at what level.

Skirvin said that the Board was going to have a discussion at the next meeting to determine whether to lower the lake to 9.0 feet.

Mark Christie became frustrated and departed during this session on lake levels.

DEQ 319 Grant

Robertson received the document with DEQ's input. Their information needs to be incorporated and returned to them; then an RFP can be drafted for the database creation.

Native Vegetation

Robertson met with Dr Pennington at Tetra Tech and brought her some suggestions and a sketch for formatting to address adding a more robust version of environmental requirements and planting. Some concerns were heard about the possibility of residents planting on their own. Residents wishing to plant would be required to obtain a permit and would be advised to contact the District and address concerns before embarking on a planting project.

Other changes are being incorporated, basically moving items, changing text boxes, etc. Green said it seems that there might be risks to these plantings that we haven't addressed in terms of excess. Setting something loose in the lake might spread faster than anticipated.

Strayer said Dr. Pennington has provided her opinion on what should be planted.

Robertson said he could add a clause that required residents to obtain a permit prior to any planting.

Green said once these plants are introduced, what are the risks of not being able to control them? What about removing the exclosures? Has anyone else considered this issue?

Weldon said Dr. Pennington listed the specs of the plants. Navigational issues are a serious concern to some residents if the tallest plants were to be installed. There could be a risk that if a native plant thrived once it was planted, it could cause havoc with recreation.

Green asked "What does 'top out' mean?"

Robertson said the report doesn't address all plants that "top out" over three feet—something that could cause an impact.

Strayer said Dr. Pennington was careful not to list plants that would get out of hand.

Members of the Board could do some experimenting and see how fast they grow, how they look and where it would be appropriate for them to grow. We could get some latitude from ODFW on where to plant them. There are plants in the one- to three-foot level that would be beneficial.

Green asked if the risk of proliferation and the risk of "top out" had been adequately assessed.

Robertson said that native plants and aquatic plants would be pretty easy to stop by simply upping the cyanobacteria in the water. You tend to have a weed-dominated or a cyanobacteria-dominated lake. With no grass carp in the lake, it's difficult to know how quickly the plants might proliferate; but, there are a lot of nutrients in the lake.

Strayer said, "We have no plans to address the nutrients in the lake. We are going on the last 15 years of history. We need to proceed slowly and do research and install controls."

Weldon suggested sectioning the guide. Divide it up and show people exactly who they have to go through to do any planting.

Robertson said this could be requested of Tetra Tech.

Green said, "We still need to delineate the 'top-out' risks."

Strayer said that to change the guide at this point would require more funds. The Board could take sections and create its own version.

Robertson asked if the Board would like a quote on making these changes.

Strayer suggested the Board let Tetra Tech complete the project as is at this time.

Green said Dr. Pennington might address this issue more thoroughly. She could even produce another report if it were necessary.

Strayer reminded that the guide belongs to the District. It is not Dr. Pennington's property and the Board can change it as they wish.

Skirvin asked if the Board should do an RFP on the "top-out" of aquatic plants.

Strayer said that in order for the Board to complete the Plan, a botanist would have to assess this issue. Soils differ around the lake. Maybe the District could create a plan and

then decide if it would be a Pennington project or that of one of her assistants at Tetra Tech or someone else. But for now, the Board needs to see the guide.

Robertson said that Dr. Pennington could list the “top-out” for each plant.

Green suggested that the District investigate the issue based on her report.

Strayer said they should investigate the different types of soil around the lake. “I don’t want 18-foot plants out there.”

Skirvin asked if the Board wanted to accept the guide as is.

Robertson said 20 copies will be provided and copies will be sent to the Board.

Skirvin said if the Board wanted to split the guide into three parts, they could do so.

Robertson said the guide would be public information.

Strayer moved to accept the Pennington contract and guide as delivered.

Skirvin seconded the motion.

Vote: Unanimous. Motion carried.

Septic Tank Revitalization Ordinance

Lenaerts reported that the City staff contacted DLWID staff mid-month to say that the City attorney would begin working on the ordinance soon. Lenaerts worked on the justification for making the ordinance watershed-wide.

The GIS database was completed last week and includes 650 properties. The City is now considering when the inspection program begins and how it will be accomplished over the three-year period.

Three types of properties will be inspected:

220 properties have no county files.

160 systems have no materials specified and are older than ten years.

177 properties have systems that are ten years of age or older.

Strayer asked if the county will update their databases.

Seth reported that the inspector would send information to the city, to the DEQ/County and the District.

Strayer asked who would maintain the database.

Lenaerts said the Board will want to keep a copy of the database.

Green said the system works only on a complaint basis. The District has to make a complaint with the county who has the authority to enforce.

Skirvin said it is valuable for the District to keep a database, but the City will also maintain the database.

Robertson said the County will record who has been inspected.

Lenaerts said that once the inspection is completed, if there is a problem, it’s the county who takes care of the problem. He also stated that this could be an ongoing inspection process with no sunset.

Discussion began regarding whether the ordinance would be an ongoing thing; it was determined that this can be discussed at a future public input session.

Lenaerts said that after the first round, the project could be evaluated to determine if and how it would continue.

Robertson stated that everything is speculative at this point in the process.

Lenaerts said that once the draft is received, a public hearing session will be scheduled when the public can make their suggestions.

Save Our Shoreline Campaign

Lenaerts said that he enjoyed getting to know the Board members that participated in the shoreline restoration. He said he recommended Weldon if anyone ever needed a master grader. On April 3, about a dozen volunteers showed up and completed the shoreline restoration of two properties. On Friday, the third one will be completed.

Financial information on the project is as follows:

Approximately \$1,100 was spent on plants; \$750 was spent on the design work.

Property owners will pay a portion--\$450 directly to Spiro Landscaping.

Green said the primary reason for focusing on shoreline restoration and erosion involves the lake level.

Strayer said, "We are going to need an expert (professional) to come in to talk about erosion, retaining walls, plantings, etc.

Skirvin asked where the erosion control came into the Plan? Are you thinking that we should add that to our Save the Shoreline agenda item? If we are going to have someone talk about that issue, it would be prudent for them to go out and take a look at our watershed before they return and have a discussion.

Robertson said maybe we should pay a professional to do a site evaluation and then come give us their findings and answer questions.

Strayer asked if Dr. Pennington would have any sources.

Robertson responded that there are hundreds of people who work at Tetra Tech.

Strayer said that Dr. Pennington could most certainly provide a list of experts.

Green moved for Robertson to develop an RFP and a list of potential contractors to study the effects of lake level on erosion of Devils Lake shoreline. Strayer seconded.

Vote: Unanimous. Motion carried.

Pigott suggested that the Board delineate more specifics on lake levels, perhaps three levels—9.0, 9.25 and 9.5. He said the RFP should include a public meeting so that the contractor will be able to answer questions from the public.

Robertson said the expert could select the criteria for lake levels. We could create a draft and have the expert bring the information here. Pay for them to evaluate.

Skirvin stated in response to someone's question about plantings proliferation, "The plantings on the two properties that were shoreline restored are ten feet back from the shoreline."

Financial Oversight Committee

Weldon reported there is no action from the Financial Oversight Committee. He is trying to get everyone together.

Communications Report

Robertson said that he has placed a number of funding suggestions into the budget for consideration. These include \$2,000 for publication of water billings mailings, funding of the Listserve, the website, the SOLV event, "Get the Lead Out," and others. These are part of the General Fund and an additional \$10,000 has been suggested to fund an

educational video that could be distributed on DVDs. Robertson also suggested a budget item to create a waterproof map that could be used as a reference piece for an indefinite period. The budget committee will ultimately determine what items will be funded.

As a side note, Robertson reported that he had received a text from Hannah Nichols, a former intern, who was attending OPB's Invasive Species program at the University of Oregon, entitled "Silent Invasion." Devils Lake was featured in the program.

Listserve

Lenaerts reported that the brochure was mailed in the water billings. Additional people have signed up to receive information. No method of determining demographics of the people who signed up.

New Business

The top priority of the Board for the next fiscal year is "Grass Carp."

The budget contains \$100,000 for the installation of additional fish. This is \$20 each for 5,000 grass carp. Robertson spoke with Bob Buckman, fish biologist for ODFW, on the grass carp. He suggested that if the District is seeking permits for something that would require the state to change their rules, be certain that it has created a sure case for the request. Some of his suggestions were:

Incorporate a boat-washing station as part of a master plan. (The District has incorporated this). Native vegetation, septic tank revitalization, Solar-Bees, etc.

A management plan for vegetation should be the reason you do or do not want to install the grass carp.

Robertson said he would recommend the Board continue with the management plan.

Need a vehicle that shows we are trying to control the nutrients. Let's finish the plan that we have begun to develop and incorporate our successes, such as septic tank revitalization. The District is on the ball with trying new things. We went before ODFW with the SolarBees. We asked them to consider grass carp if we could not manage the weeds and they nodded. Shoreline plantings are the best way to keep the weeds out of the lake. Upland vegetation planted to trap the nutrients is the long-term solution, but we still need to be doing the other things. We can show progress and when we appeal the application we will be ahead of the game.

Green asked if there was any objection to completing the Devils Lake Plan if for no other reason than to appeal the grass carp application.

Strayer said it really doesn't say what we are going to do and how we are going to do it.

Robertson said that there is an implementation time line. It can be vague, but it hasn't been in most steps. The Board needs to decide on it. It is an internal document that will benefit Devils Lake and we can tick things off after completion. Save our Shorelines was on there as well as Grass Carp.

Pigott interjected: One of the things to consider is the vegetation and the subsurface plantings. If you don't include the plantings, you might cut off the appeal for grass carp. Pigott felt that he was not treated fairly with his interjection.

Weldon said, "We have been very lenient with the public's lengthy interjections; however, we need to keep comments a little more concise."

Green said he feels that everyone has been respected. "We do allow extensive public comments."

Green said in regard to the Lake Plan, the Board should try to define what should be included. Strayer's comments are well taken. It is simply a laundry list of items we could do.

Robertson said, "We have eliminated a lot of the items that are completed."

[Robertson: Quality Assurance Plan is coming next.]

The Board suggested that Robertson finish his draft and revisions to the Communication Plan and give them a quick version within 30 days of being finished with the Devils Lake Plan.

Green said he was concerned about the verbiage of the priorities of the Plan. "I am concerned that we started out on how we were going to get grass carp. We should include it in a designation as weed-control alternatives. Change the title to 'Best weed-control solution.' It might be a better persuasion tactic."

Green moved to change the first priority as established in the Board's April meeting and listed on page 4 of the Budget from "Develop and implement a strategy for the reintroduction of Grass Carp" to "Develop and implement a strategy for the control of Invasive Aquatic Vegetation." Strayer: Seconded.

Weldon expressed concern that this could move the focus from the application appeal of grass carp as a solution. Further discussion ensued.

Vote: Unanimous. Motion carried.

Thompson Creek

Robertson made contact with Dr. Field of OSU, a specialist in bacterial fingerprinting. Robertson will meet with her in Corvallis at the end of May to work on this project for DNA fingerprinting of bacteria. Funds were included in the budget to cover this program.

Skirvin: When you start your sampling is Thompson Creek polluted immediately?

Robertson: Since E.coli is not monitored year round, it's difficult to say.

Since it has E.coli 14 out of 22 days during the monitoring, Thompson Creek probably has E.coli during May as well as August. We will continue to look at this.

Keith Bowden: Are you sampling at the creek? Is there already a base for definition?

Robertson: The Soil and Conservation District is already working up there.

Discussion ensued about liability of the District regarding septic tank pollution in the lake. Conclusion was that there should be no liability since the District is working to correct the issues.

Sewer

Robertson said sewerage a lake is either a life saver or a death sentence. Development will proliferate if the sewer is installed. If development became rampant, that's a lot of watershed that would be polluting. To delicately approach sewerage is the best action. Discussion continued about the pros and cons of sewer. Plans would need to be developed. What are the considerations? Land use planning would need to be addressed on the east side. Goals would need to be considered and the best way to achieve those goals. Annexation is not a positive for homeowners. The concerns that have to do with water quality are the priority of Board members.

Robertson said there is going to be contention if the Board wants to promote sewer around the lake.

Non-agenda Items

Robertson said he has been invited to DEQ headquarters in May and it is something he would like to attend. It is DHS and DEQ. Wayne Carmichael who is giving the cyanobacteria training is trying to organize enough support to push DEQ into running a fresh water cyano program statewide that would take us off the hook on this issue. It's more information gathering and they have contacted us. Our program is a model for the state.

Public Comment

Pigott reiterated his concern about public comments not being respected. He asked, "What is the role of the public in these meetings?"

Why is the material on the east side of the highway at D River not pulled out? He said sediment is falling into the area and is building and building within 100 or 200 feet of the dam. Would it be beneficial for Bill [Sexton] pull the stuff out? Can we get a permit?

Strayer informed him that the District cannot move anything because of the salmon habitat. They come in during high tide.

Weldon added that it is sand that is a natural phenomenon. We have no permits on that side of the road.

Board Comments and Announcements

Strayer said a couple of times people have sent information to Paul or to the Board. He is wondering if there is a way of attaching that statement to the Minutes as an official part of the minutes if the statement is submitted for the record.

Weldon: One thing he has researched is that phosphorous seems to be a leading cause of nutrients. He asked if the Board should consider promoting a ban on this. Would it be possible to track down an ordinance already in existence so that we could educate the gardeners and residents? Non-phosphorous costs the same as phosphorous.

You would want a full city/county basin-wide ordinance to ensure that stores not sell it.

Robertson: It is in the Devils Lake Plan. It is certainly something we could consider.

The meeting adjourned at 8: 46 pm.

Respectfully submitted,
Linda Burt