

**MINUTES OF THE LITTLE CALUMET RIVER BASIN DEVELOPMENT COMMISSION  
HELD AT 6:00 P.M. THURSDAY, SEPTEMBER 2, 1999  
AT THE COMMISSION OFFICE  
6100 SOUTHPORT ROAD  
PORTAGE, INDIANA**

Chairman Emerson Delaney called the meeting to order at 6:05 p.m. Nine (9) Commissioners were present. Pledge of Allegiance was recited. Quorum was declared and guests were recognized.

**Development Commissioners:**

Emerson Delaney  
Charles Agnew  
Marion Williams  
George Carlson  
Robert Huffman  
Steve Davis  
Arlene Colvin  
John DeMeo  
Curtis Vosti

**Visitors:**

G.W.Hodges – Portage Port Authority  
Tim Zorn – Post Tribune  
Denis Buksa - Munster IN  
Herb Read – Izaak Walton  
Jim Flora – R.W. Armstrong Co.  
Don Ewoldt – Lake Erie Land Co.  
Cliff Fleming – Lake Erie Land Co.  
Howard Anderson – Izaak Walton  
Carolyn Marsh  
E. J. Banas

**Staff:**

Dan Gardner  
Sandy Mordus  
Lou Casale  
Jim Pokrajac  
Judy Vamos

The minutes of the August 5, 1999 meeting were approved by a motion from George Carlson; motion was seconded by John DeMeo; motion passed unanimously.

**Chairman's Report** – Chairman Emerson Delaney announced the appointment of John Mroczkowski from Highland to the Development Commission Board. He will replace Bob Trelo for the remainder of the term that expires 12/31/99. Mr. Delaney also referred to the revised committee structure contained in the agenda packet.

Chairman Delaney reported on the meeting held July 16<sup>th</sup> with Lake Erie Land Company (LEL) concerning their proposal for land enhancement of Commission property. All Board members have received the latest revised Option and License Agreement drafted by the Commission attorney. Before discussion can take place, a motion needed to be made. George Carlson made a motion to accept LEL's proposal and enter into an option agreement with them; motion seconded by Chuck Agnew. Discussion followed. Commissioner DeMeo stated that since Commissioner Bill Tanke was absent, Mr. Tanke had drafted a letter he wanted read to the Board members. Mr. DeMeo proceeded with reading the letter which is attached as Exhibit A and made part of minutes. Following the letter is Executive Director Dan Gardner's comments addressing Mr. Tanke's written concerns and is also made part of the minutes.

Commissioners Vosti and Williams requested that any public comments be made first and then discussion by the Board members will be after their comments.

Carolyn Marsh stated that she has just read about this in the paper and has a great deal of concern. She questioned its legality and opposed the concept. Mr. Gardner responded by saying these lands were bought by the IDNR and later by the Development Commission and will remain public lands for the purpose of the flood control/recreation project. The proposal that the Commission is considering does not violate the use of these lands for project purposes nor does it take it out of public use; we are only licensing and enhancing these lands – not selling them. The proposal was publicly solicited for the main purpose of bringing additional improvements to the land and principally, to raise some ongoing operating revenue to allow for the maintenance of the project. The Commission does not have taxing authority and has been requested by the General Assembly to pursue revenue for operation after project construction is complete.

Ms. Marsh expressed concern that the wetlands were being created by private entities as a mitigation bank and she thought that private citizens should be aware of this. Mr. Gardner responded that this was publicly solicited and noticed and that various environmental groups as well as the media have been to several meetings in which discussion took place.

Commissioner Bob Huffman interjected that IDNR and IDEM will permit where the wetland project will go. Federal, State and local agencies will have an opportunity to comment when the permit process begins. The public will also be able to comment during this process.

Howard Anderson was recognized and he commented that he thought the \$10 million in terms of enhancement was a high figure. What they envision is a good idea but he does not know all the details. He had several concerns regarding the development of public property into wetlands that would sell mitigation credits. Additionally, \$10 million spent for restoration or recreation seems to be a very large figure and would this be causing a problem elsewhere? Mr. Gardner responded that the land would remain in public ownership and be available for all original project purposes. Secondly, this would provide operating income for the project. Lastly, the intent was to use the credits for previous violations not as a bank for future projects.

Herb Read of Izaak Walton League added he has been aware of the Little Calumet River Project for over 40 years and that this development is going more in the direction that he originally envisioned for the development of the corridor. The preservation and the enhancement of wetlands by Lake Erie Land Company appears to be a good thing. Mr. Read further stated that environmental groups are usually against wetland banking because of abuse. He also said it should not go for new projects and indicated that Charlotte Read of Save the Dunes Council, wanted to go on record that she opposed private mitigation banking. He ordinarily does not endorse mitigation banking per se.

Mr. Gardner stated that the Commission feels this is a good plan because it not only enhances wetlands by adding additional recreation features the COE will not pay for. He further offered that the Commission and

Lake Erie Land Company would be available to meet with environmental groups in a workshop setting to discuss the issue and explain project features. This discussion concluded the public comments offered on the project.

After discussion and per Bill Tanke's letter, Lake Erie Land Company agreed to change "Licensee" to "Commission" in Line 3 Page 2 Item 3 and then change "Commission" to "Licensee" on Line 5 Page 2 Item 3 in the License Agreement. Mr. Vosti added that he appreciated the public comments from the audience. He was pleased to see that they offered about \$13 million in physical improvements in terms of wetland restoration and recreation improvements. Mr. Vosti then asked Howard Anderson about his concern in filling in new wetlands using these credits.

Mr. Gardner answered that, to his knowledge, there are over 1700 acres needed for mitigating past violations principally by industries along the Grand Calumet River. Don Ewoldt added that Lake Erie Land agreed with the concept of using the credits for past non-compliants. Carolyn Marsh feels that people need to be in the decision making and suggested a citizens advisory board be developed and that other lands near Lake George and Lake Michigan be considered for the creation of wetlands. Mr. Gardner indicated that the Commission only has responsibility over the Little Calumet River as it pertains to our project.

Commissioner Williams expressed a concern about transferring responsibility to a third party. Could the Commission turn over responsibility of interest and what was Lake Erie Land Company's involvement and what would be our role in oversight? Mr. Gardner indicated that we would still own the property and be responsible for its proper usage. A third party would be selected whose experience and expertise would be needed for land management and acceptable to all permitting agencies. For the first 5 years, Lake Erie Land will establish the wetlands in compliance with the permits. Our responsibility would begin for maintenance after those 5 years.

Attorney Casale then added that the legal document is an option to enter into a license agreement. It is conceivable that a license agreement may never happen. If the Option is exercised, any designs of any development has to be approved by this Commission first. Lake Erie Land would have to come back with their final design plans if they exercise the agreement. Mr. Gardner indicated that monthly reports will be given and an existing committee will oversee this issue.

Commissioner Williams asked whether any of the land could be given in phases rather than the total 905 acres all at once. Mr. Gardner responded that for permitting purposes all land must be considered at first and that the development proposal has phases that will be implemented. He added that staff researched and felt Lake Erie Land is financially capable and has been very responsive and are qualified to perform the work.

Commissioner Huffman stated that the Commission has had extensive discussion regarding this agreement and in his opinion, it is a good agreement and the Commission should be proud of it. Nothing is without risk but feels risk is more on the part of Lake Erie Land than this Commission.

Commissioners DeMeo and Carlson agreed and had no further comment.

Commissioner Davis stated that from the standpoint of natural resources, it used to be wetlands and prairies between the levees and next to the river and that man turned them into an impacted area and they probably would stay impacted unless we do something. He viewed this as a large benefit to be turned back to natural areas. A second large benefit is the help in paying for it. We are not asking the taxpayers for it. We have addressed all areas we had a concern about.

Commissioner Colvin thinks the Commission has worked hard to balance public trust and our need to maintain the project so that the project is economically sound. She further stated that she thought all Commissioners' comments have been taken into account and it is a good agreement.

With that, a vote was taken. There were 8 ayes; 1 abstention vote by Bob Huffman (due to his employment at NIPSCO, he thought it may be a conflict of interest); and 2 Commissioners absent.

Chairman Delaney referred to the appointment status sheet distributed. Four appointments are expiring at the end of 1999 and one appointment has already expired. Commissioners should pursue their re-appointment if they are interested.

**Executive Director's Report** – Executive Director Dan Gardner referred to a news article in the agenda packet about Wicker Park Manor Subdivision still being in the flood zone. FEMA is the agency that has to declare it out of the floodplain; they have not done that. There is an unresolved issue on the east side where the levee ties into Erie R.R. FEMA says it is not high enough. The town of Highland has hired a consultant firm, Christopher Burke Inc. to help them get over this last hurdle.

Mr. Gardner also stated staff is working with the Congressman's staff and the COE to schedule a dedication of the project. It will signify roughly the halfway point of construction of the project. The targeted date is Friday, November 12<sup>th</sup>.

**Land Acquisition Committee** – Committee Chairman Chuck Agnew stated that there were no motions to be made. Mr. Agnew stated that COE sent a letter to Jim Flora indicating that Operation and Maintenance for the 4 Gary east reach pump stations is outside the construction contractor's scope of work. The COE states that according to the LCA, it is the Commission's responsibility. The COE and the Commission have not signed off the pump stations yet. Pump stations are currently not active. The Commission controls final testing and inspections are needed to sign off on these stations.

Mr. Agnew referred to the COE letter in the agenda packet from Phil Bernstein, Chief of Planning at the COE office, summarizing the conclusions of the July 15<sup>th</sup> meeting held at IDNR regarding project mitigation in the Hobart Marsh area. It was determined that we were in compliance with the number of acres and the COE should be receiving approval of the mitigation plan from IDNR soon. It is critical to obtaining future construction permits.

**Project Engineering Committee** – Committee Chairman Bob Huffman reported that final inspections for Stage II Ph. 3B and Stage II Ph. 4 are scheduled with us for early October. After inspections are satisfactory, the COE will be asking us to take over operation and maintenance. At this point, we are not ready to do that.

Mr. Huffman referred to a letter in the agenda packet from the COE stating they decline the request from Gary Sanitary District to cost share (in the amount of \$175,000) for the installation of telemetry to the 4 east reach pump stations based upon Federal regulations. Mr. Gardner added that we support the cost share but the COE has stated their opposition. Further discussion will be scheduled and other funding sources explored.

Mr. Huffman also reported that we have received final engineering drawings for Stage V Ph. 3 (Woodmar County Club) and have been directed by the COE to proceed with land acquisition.

Commissioner Curt Vosti asked about the engineering drawings received for Stage V Ph. 3. Jim Pokrajac answered that although we had earlier received the final real estate drawings, we cannot begin the appraisal process until engineering drawings are received. He further stated that Woodmar County Club had been given the opportunity some time ago to comment on the drawings. Since these are now final, it is hoped that there will be no additional comments.

**Legislative Committee** – Committee Chairperson Arlene Colvin stated they we are attempting to get on the next State Budget Agency agenda. Staff has scheduled a meeting with Representative Chet Dobis for September 8<sup>th</sup>; we will also try to contact Representative Earl Harris to meet with him. The Legislative Committee met on August 25<sup>th</sup>. Mr. Gardner added that he understands it was an oversight that we were left out of the budget and that they will work with us to obtain some money.

**Recreational Development Committee** – Committee Chairman George Carlson reported that at the last meeting, the Board authorized staff to send a letter to the COE requesting that the Erie RR bridge and trail section be moved up and bid separately to take advantage of some transportation grant money that Highland has received. Once some costs are received from the COE, a Recreation Committee meeting will be scheduled.

Mr. Carlson also talked about some vandalism that had taken place at the Carlson OxBow Park. He inquired of Curt Vosti whether a police report had been filed. This was really the first major vandalism problem that the park has had.

**Marina Committee** – In Committee Chairman Bill Tanke's absence, Mr. Gardner gave the marina report. He stated that a meeting has been scheduled with mayor-elect Doug Olsen on September 20<sup>th</sup>. To relay to him the Portage Public Marina's history, funding, our relationship with the city, where we go from here, etc.

Mr. Gardner also stated that although the COE has some money to do dredging at the Burns Waterway, necessary permits have to be obtained and dredging that area will be done next year.

Mr. Gardner referred to the marina claim of \$28,643.84 for the October 1<sup>st</sup> date due for the marina revenue bond. John DeMeo made a motion to approve the claim; motion seconded by Bob Huffman; motion passed unanimously.

**Finance Committee** – Committee Chairperson Arlene Colvin presented the financial status report and claims for approval. She made a motion to accept the financial report and approve the August claims; motion seconded by George Carlson; motion passed unanimously.

**Minority Contracting Committee** – Committee Chairman Marion Williams reported that there was no minority contracting report at this time.

**Statements to the Board** – There were none.

There being no further business, the next regular Commission meeting was scheduled for **6:00 p.m. Thursday, October 7, 1999.**

John: Please Present this to Full  
Commission at the meeting so it can  
be included as a part of the Minutes

The License & Option as corrected per  
Phone Conversation with Lou, Dan & Don  
on Aug. 2, 99 could be a profitable  
Venture for the Commission, however  
I have some reservations & deep  
concerns about ~~the~~ involving the  
Commission in a venture that could  
be very costly in the future.

I would submit the following:

The spreadsheets were to show best &  
worst case, they reflect Best case only,  
for example all 3 show <sup>Total</sup> money invested at  
either 5 or 8%, None show the yearly  
deduct for maintenance of \$60,000 plus  
per annum.

\* In license Agreement Item 3A should ~~be~~  
include 5-10 year ~~Renewal~~ Renewal as per  
prior drafts. This should be at option of Commission

\* Item B-1 the amount should be increased  
to reflect the 905 Acres per Cole determination  
Based on 844 acres @ \$43,630.00 this is \$51.70  
per acre times the 61 additional Acres, this  
should increase by \$3153.00 per year or  
\$157,685.00 over the life of the agreement  
with no consideration of interest. LEL did  
agree to a lesser amount on Tuesday. I believe  
we should insist on Full Amount.

This would also change Item 3 in the option  
Item B-3 The wood management was struck  
from this version. It is my understanding

"Exhibit A" 7

that they are now saying. The reason we are paying you all this money is to provide funds for management, Don also offered to manage & LEL would keep the money. My suggestion is they pay us & then we contract with them for \$63,300.00 year which is the new estimate. LEL would probably not agree to this, since no one knows with any certainty the maintenance costs.

\*

Item N-12. There needs to be a definition for maintain & also operate. This should be tied into the Federal mitigation Guidelines.

This paragraph states LEL maintains for first 5 years of agreement, what if only lets say 50% are completed, where are we? My suggestion was 5 years after completed & accepted by the required Federal ~~Agencies~~ Agencies. (The plantings as required by Detroit Corp. For Manira have still not been Accepted.

In summation I would like to state that after 4 or 5 hours of phone conversations with USACE people in both Chicago & Detroit, E.P.A. people in Washington, they are not aware of wetland mitigation cost to develop, cost to maintain or selling price of credits. Should the maintenance cost increase, should a catastrophe occur & there is extensive replanting, trail replacement etc. would this be our responsibility? LEL says NO EPA says yes we are to maintain in perpetuity.



In my opinion a week or 2 delay would be  
beneficial in possibly having someone from  
EPA the Corp or Both come to a meeting  
and discuss all the possible ramifications  
This is too important a decision to make,  
Both are millions of Dollars & ~~at~~ 50 plus  
year commitments to not have  
all the facts.

William S. TANKE