

MINUTES OF THE LITTLE CALUMET RIVER BASIN DEVELOPMENT COMMISSION
HELD AT 6:00 P.M. THURSDAY, January 8, 2003
6100 SOUTHPORT ROAD
PORTAGE, INDIANA

Chairman William Tanke called the meeting to order at 6:15 p.m. Nine (9) commissioners were present. Pledge of Allegiance was recited. Guests were recognized.

Development Commissioners:

William Tanke
Robert Huffman
Mark Reshkin
George Carlson
Steve Davis
Curt Vosti
Emerson Delaney
Robert Marszalek
Arlene Colvin

Visitors:

Jim Flora – R.W.Armstrong Company
Sheldon Grad – Allied Realty Corp.
Imad Samara - COE
Jomary Crary - IDNR
Sandy O'Brien - Hobart

Staff:

Dan Gardner
Sandy Mordus
Lou Casale
Jim Pokrajac
Judy Vamos

The minutes of the December 11 meeting was approved after a correction was made whereby it was clarified that the request made of Sean Fahey to see what he could do about getting approval to draw funds down to allow for demolition of 3 houses in the Betterment levee project area was to be made in writing (and not just report back). Motion to accept minutes as amended was made by Curt Vosti; motion seconded by Bob Huffman; motion passed unanimously.

Chairman's Report – Chairman Bill Tanke referred to a Committee preference sheet distributed to all members and asked members to fill it out and return to Sandy.

- Chairman Tanke referred to a letter he wrote to the Lake County Commissioners transmitting the attendance sheet and notifying them that their appointment to the Commission has only attended 4 out of 13 meetings and that his appointment has been expired since 12/31/01.
- Mr. Gardner was also requested to call other members who have had poor attendance to see if they wish to continue to serve on the Commission
- Chairman Tanke stated that before moving onto the Nominating Committee's report, he proceeded to read a few notes he had made on his observations over his years on the Commission. After sharing his thoughts, Commissioner Carlson made a motion that he have the notes typed up and distributed to all members; motion seconded by Bob Huffman; motion passed unanimously. They thanked him for all his years of contribution to the Commission.
- The Nominating Committee, consisting of committee chairman Mark Reshkin, Bill Tanke and Curt Vosti, gave their report. Dr. Reshkin reported that the committee had met in late December and proceeded to nominate the following candidates: Chairperson – Arlene Colvin; Vice Chairman – Emerson Delaney; Treasurer – Curt Vosti; Secretary – Bob Marszalek. There being no other nominations, the presented slate of officers was voted unanimously to serve for 2003. Commissioner Arlene Colvin proceeded to preside as Chairperson and presented outgoing chairman Bill Tanke with a plaque and expressed the Commission's thanks to him for serving as Chairman.

Executive Director's Report – Executive Director Dan Gardner reported that we have been in communication with the west reach elected officials in regard to the public notice that was mailed to the residents in the west reach. He is going before the Highland Town Council on January 13 to update members on the project and status of funding.

- Mr. Gardner reported that he has received a letter from Mr. Richard Whitney, Chief Financial Officer at INDOT, regarding their research on highway credit. The letter indicated that 3 of the 4 projects were funded with 100% state funds. The 4th project was 80% federal/20% state. With all 4 projects considered, the letter indicated that about \$19,590,000 is available for state credit for the federal project. INDOT has received approval from the FWA to allow the use of the funds in this manner and they are contacting the COE for their approval. Mr. Gardner will report back to the Board members once he has confirmed all the facts and get further clarification. On the surface, it appears to be very good news.

Land Acquisition/Land Management Committee – Committee Chairperson Arlene Colvin gave the report. She reported that there were no increased offers or condemnations. Staff is proceeding with acquisition in the west reach within the limits of our funding. Staff is also proceeding with acquiring land for mitigation.

- Ms. Colvin reported that the second phase of the Charles Agnew Handicapped Park is completed. Commissioner Marszalek shared some photographs of the playground equipment with the Board members and also presented a letter from River Forest Elementary School Principal Andrew Wielgus thanking the Commission for their help in completing Phase 2 of the park. They have confirmed that all the equipment seems to have been installed according to specs and appears to be in good working condition. The Commission will follow up with payment for the equipment. Commissioner Vosti inquired about LEL's involvement in the payback of the funds we've expended. The project is not totally completed as LEL's Don Ewoldt presented it to the school and to us. It was always stated that once LEL can sell credits for mitigation on that property, they would have money to proceed with the improvements. Staff will follow up to check latest status.

- Commissioner Bob Huffman stated his disappointment that the demolition of the abandoned houses in our project area did not happen yet. Mr. Vosti added that he understood that, although Mayor King expressed his concern and desire for the city to do the demolition, we would first await the State's answer as to being able to draw down the funds for the demolition. If the State says "no", then we would ask the city to go ahead with demolition. Chairman Tanke asked the attorney to check the Commission's insurance policy to see if demolition would be covered. Jim Pokrajac added that there is a difference in the bid amount with just knocking down the house and then removing it also.

Environmental Committee – Committee Chairman Mark Reshkin gave an update on the Hobart Marsh mitigation properties. He reported that the offer on the Kim property has been made; although nothing has been received in writing, the offer may be rejected but possibly a counter offer will be made. Other property owners have not responded yet. Without having condemnation power in that area, we can only purchase property with a willing seller.

- Dr. Reshkin referred to a Post Tribune article regarding new Federal guidelines regarding wetland losses and their replacement.

- Dr. Reshkin spoke on the relationship we have with LEL. The Environmental Committee had a conference call with LEL's attorney and it was determined that LEL cannot be the entity that requests a mitigation permit – it has to be the landowners. In light of this development, it has become a mitigation project, rather than a mitigation bank; and if that is the case, other contractors conceivably could bid on the contract. Ongoing discussions will continue with LEL. The attorney has sent a letter to LEL's attorney.

Legislative Committee – Committee Chairman George Carlson gave the legislative report. He referred to the letter that Mayor Scott King will send to Representative Earl Harris, seeking his help in securing funds for the project to continue.

- Mr. Carlson also referred to the letter that Mr. Gardner sent to Kelsee Waggoner of the Congressman's staff, pointing out the seriousness of insufficient state funds to meet the federal funds. The letter reiterated our budget request of \$9.5 million; it spelled out our endeavors in keeping in contact with the local elected officials and legislators; and our continued discussions with officials at IDNR and the State Budget Agency. Commissioner Vosti asked if there was anything else we could do to get a meeting down state and Mr. Gardner did not think so.

- Mr. Carlson stated that he even took the opportunity to talk about funding when the Congressman called him on his 90th birthday to wish him a Happy Birthday.

Project Engineering Committee – Committee Chairman Bob Huffman gave the engineering report. He reported that inspections of levee segments for Stage II Phase 4 (Broadway to Martin Luther King Drive north of the river), Stage II Phase 3B (Harrison to Georgia south of the river), and Stage IV Phase 1 South (Cline to Burr south of the Norfolk Southern RR) were held on December 18, 2002 with the COE and each contractor. All 3 segments were accepted as per plans & specs which relieve the contractors of all future responsibility; all east reach inspections are now completed with the exception of the Betterment levee; the COE anticipates turnover of all segments no later than September 30, 2003.

- Mr. Huffman reported that the Commission has received a letter from INDOT there would be a \$250,000 cost increase to re-locate their pump station west of Indianapolis Blvd. in Highland. The increased cost would be at 7.38% for Highland, 89.35% for North Township and 3.27% for INDOT. It is hoped that the incremental cost difference can be met locally.

- Stage VIII engineering contract with SEH (Columbia Avenue to State Line) has been terminated and may not start back up for at least 2 years due to lack of funding. Commissioner Vosti questioned the legality of the COE terminating the contract. He asked the attorney if Commission approval was necessary before termination and was told that it is not necessary. Mr. Vosti asked Imad Samara for a copy of the termination and a report on the details of what work was done and what remains to be done and the actual dollar amounts estimated for remaining work. He also asked staff to notify Board members in the future if any termination of contracts should occur again.

Recreation Committee – Committee Chairman Emerson Delaney stated that no recreation construction is going on at this time. Everything is done that had to be done.

Marina Committee – Committee Chairman Bill Tanke reported that several meetings have been held recently with the city of Portage. He referred to a packet of information previously sent to Commissioners regarding the views of the Committee, including a letter from Portage City Attorney Greg Sobkowski. Mr. Tanke proceeded to make a motion that would authorize the attorney to prepare a bond resolution and legalities for a revenue bond not to exceed \$900,000 and subsequent adjustments, (\$828,000 was the low bid for the docks) necessary legal work and other administrative costs. Motion is contingent upon (1) city of Portage will, no later than the 10th of each month, furnish the Commission a full accounting of all expenditures from the proceeding month; (2) no amount over \$500 shall be approved by the city without the Commission's approval in writing; (3) the order of distribution of revenue derived from the marina will be as follows: (a) payments for both revenue bonds will always be made out of the yearly marina revenues prior to the payment of any marina operational or capital expenses; (i) if there is a shortfall in revenue year and there is sufficient money to pay the two bonds, but there is not enough money to cover O&M expenses of the marina, the city will pay the shortfall in the marina O&M; (ii) and if there is a shortfall year where there is not even enough revenue to pay both revenue bonds – (1) the second bond payment will always be made first out of the existing revenue funds for that year; and (2) the original bond payment will be made second, and per the original agreement, the city will make up the shortfall for the original bond payment; (b) revenue after the two bond payments have been made, will go for O&M of the marina; (c) any surplus revenue after the bonds have been paid and the O&M expenses have been covered, will go to the Commission to repay its original past expenditures; (4) the final amount to be reimbursed to the Commission for cash contributions is \$929,000 plus an additional amount of legal expenses that is to be determined & finalized within 30 days; (5) no work on parking lots or other construction within the NIPSCO R/W will be performed by the city without full and complete indemnification of the Commission with proof of liability insurance in the amount of \$100,000,000; (6) by January 15, Portage and the Commission will agree to sign and enter into a inter-local agreement incorporating the above items; (7) after all revenue bonds are paid in full and the cash contribution from the Commission is reimbursed, the city may purchase the real estate owned and leased by the Commission for the marina for no less than its fair market appraised value as of the date that above said debts and bonds have been paid in full. Motion was seconded by Emerson Delaney. Discussion ensued. The amount of the \$100 million indemnification amount was questioned. The attorney did not think anyone would be able to secure a \$100 million policy. The motion was amended to state that the city would indemnify the Commission with proof of liability insurance in the amount of the limits set by the Indiana Torts Claim Act. It was further stated that Bank One has approved up to \$1 million in a revenue bond until January 15 and that is

why action has to be taken immediately. The Portage Port Authority meets tomorrow night and if the city will sign and agree to above terms, Phase 2 of the marina project can move forward. Commissioner George Carlson made an amendment to the motion to defer it to the attorney. Commissioner Vosti seconded the motion for discussion purposes only. It was explained that the problem with no action tonight is that they cannot proceed then because the Bank One offer is only good until the 15th and to delay this another month, would also delay the construction of the marina docks to the point that they would not be ready for this boating season. Mr. Tanke went on to say it was critical to complete the marina now at this time and not delay it. His motion covers all points of concern. Several commissioners expressed concern. Commissioner Mark Reshkin agreed with Mr. Tanke that we should move forward on this and reiterated that Mr. Tanke's motion covered all concerns. Although Commissioner Vosti applauded Mr. Tanke's efforts in desiring this to go forward, he still had problems with it. He did not see the urgency of why we couldn't just wait until next year. Mr. Tanke stated we have been diligently pursuing this with the last mayor and now with this mayor for the last 3 years and this is as close as we've ever been to an agreement. If the project is not completed, it would put the Commission at risk to pay back monies to the COE that was expended on the breakwaters. Also, if we waited until next year, the interest rates would probably be much higher. Attorney Casale also suggested that we move forward and present the resolution to the city. He felt that all points were covered in the resolution and that it should be Portage now that has to decide at their meeting tomorrow night. He also stressed that this is a preliminary bond resolution. A final bonding resolution has to be passed at a Board meeting at a later date. The amendment motion made by Mr. Carlson was defeated. Mr. Vosti still had a concern about the inappropriate amount of time that has been given to review the material given to the members. Mr. Vosti proceeded to make an amendment to the motion to approve the resolution as presented by Mr. Tanke with all 7 items – as a preliminary resolution and that it be referred to the Finance Committee for review with the final resolution being approved by the Finance Committee first before approval by the Commission members. After further discussion, the motion was approved. Although the motion was approved, Mr. Vosti went on to say that, with the issue of the COE coming back to us for \$1 million payback for the marina, he feels this would not be a priority with the COE. It is still a recreational project. He feels we are more on the line with default of the levee project with the shortfall in state funding and that should be more of a concern to us. It was questioned whether we should consult with the State before entering into an agreement like this. Mr. Tanke felt it is not necessary and should not be part of a motion. Mr. Vosti, who is more concerned about getting the levee construction going in the west reach, especially the Hammond portion of which he represents, felt the marina project is more of a "playground for the wealthy". Commissioner Huffman questioned what our Plan "B" is if the mayor does not accept the resolution. After discussion, the only alternate plan would be for a special sit-down meeting with the city to negotiate. Mr. Vosti asked that the preliminary resolution be typed up and sent to all members. Since the Port Authority meeting is at 7 p.m. tomorrow night, it will be sent to the mayor in the afternoon so he has time to look it over.

Finance Committee – Committee Chairman Curt Vosti gave the financial report. He made a motion to accept the financial statement and claims as presented; motion seconded by Bob Marszalek; motion passed unanimously.

- Mr. Vosti stated that the approval of NIRPC's contract for administrative services was tabled at the last meeting until a justification of the 5% increase could be made. Mr. Gardner presented a 2-page accounting of the NIRPC contract figures with a monthly service cost breakdown. After discussing the figures breakdown, Commissioner Reshkin still did not agree that the increase should be 5%. Mr. Vosti asked Mr. Gardner to have Hugh Rhein, Finance Administrator for NIRPC, at a Finance Committee meeting to explain and justify the figures.

- The contract for legal services was presented. There is no hourly increase. The only change is the termination clause from 14 to 30 days. Mr. Vosti made a motion to approve the legal contract as presented; motion seconded by Mark Reshkin; motion passed unanimously.

- The contract for R. W. Armstrong Company was presented. The contract remains the same and there is no hourly increase. Mr. Vosti made a motion to approve the contract as presented; motion seconded by Bill Tanke; motion passed unanimously.

- The contract for technical crediting services for Sandy Mordus was presented. The contract remains the same and there is no hourly increase. Mr. Vosti made a motion to approve the contract as presented; motion seconded by Bill Tanke; motion passed unanimously.

- Mr. Vosti made a motion approving the agreement with USGS for the Hart Ditch gage station at a cost of \$5,470 for this year only; motion seconded by Bob Huffman; motion passed unanimously.
- Mr. Vosti made a motion to approve a budget transfer in the amount of \$9500 from Budget line 5821 (Travel/Mileage) to Budget line 5812 (NIRPC Services); motion seconded by George Carlson; motion passed unanimously.
- Mr. Vosti made a motion to approve the 6-month 2003 Operating Budget as presented; motion seconded by Mark Reshkin; motion passed unanimously.

Policy Committee – Committee Chairman George Carlson referred to page 11 in the agenda packet in which the change is made to the procedure of the nominating committee. The first reading was approved at the last Board meeting. Mr. Carlson proceeded to make a motion finalizing the passage and adoption of the change as presented; motion seconded by bob Huffman; motion passed unanimously.

Public Relations Committee – Committee Chairman Bob Marszalek stated he has already made his report earlier regarding the completion of the phase 2 playground equipment installation at River Forest Elementary School.

Other Issues – Mr. Gardner referred to page 12 in the agenda packet that is a COE fact sheet that is posted on their web site. Commissioner Huffman tried to download the project maps but was unable to do so. Commissioner Reshkin inquired whether the Commission had its own web site and was told that it does not but we are included in NIRPC's web site.

- Bill Tanke inquired why NIRPC does not have a flag in front of the building. He proceeded to make a motion directing staff to pursue the issue of obtaining a flagpole with NIRPC; motion seconded by Curt Vosti; motion passed unanimously.
- It was stated that if a special meeting has to be called, we will give at least a 48 hour notice to the media, as required by law.

Statements from the Floor – Sandy O'Brien asked if she could obtain a copy of the Commission's budget request and a copy of the letter that was sent to Kelsee Waggoner of the Congressman's staff.

The next meeting was scheduled for 6:00 p.m. Thursday, February 6, 2003.