



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

**DLWID OFFICE  
February 4, 2010  
6:00 P.M.**

**PRESENT:** Jack Strayer  
Brian Green  
David Skirvin  
Randy Weldon  
Joe Barnes

**ABSENT:** None

**AUDIENCE:** Mark and Kerry Richards, Mark Christie, Larry Brown, Bill Zekan and Tony Shearer from Lincoln County Dept. of Planning and Development, Don Sell, Greg Erickson, Gary McGrath, Miles Schlesinger, Avette Gaiser, Gary Ellingson, city councilman, Mark Highland

**STAFF:** Paul Robertson, Seth Lenaerts, RARE Participant

**MEDIA:** Patrick Alexander, *The News Guard*

Green brought the meeting to order at 6:00 PM.

**Director Swearing In: Joe Barnes**

Barnes read and signed the Oath of Office as the new Director.

**Minutes of Previous Meeting**

Strayer requested a change on Page 7 of January's Minutes: Robertson will disburse the funds of \$3,000 and transfer them from Debt Service to Vegetation Management. With the change, Green moved and Strayer seconded approval of the Minutes from January. Vote: Unanimous. Motion carried.

**Minutes of the Goal Setting Minutes**

Approval of the January 9 Goal-Setting Workshop Minutes were deferred to March's Board meeting to allow more time for the Board to review them.

## **Financial Report**

Robertson noted a few additions to the financial report. He answered a couple of questions from Strayer regarding tax receipts vs. budget. Strayer asked for a report showing comparison to last year's actual; Robertson will comply. Tax revenues declined slightly, according to Robertson. Green moved to approve the financial report with the noted request of Robertson. Weldon seconded. Vote: Unanimous. Motion carried.

## **Public Comment on Agenda Items**

Green asked that the requirement for audience speakers to limit their comments to five minutes be followed tonight.

Mark Christie: Read a letter that he had written and asked lakefront residents to sign. Christie said the proposed resolution of DLWID excluded property owners' involvement. Barnes agreed property owners' input is valuable, and then asked what would the point be in waiting on the issue? Christie feels the property owners would feel more empowered if they had input and with "buy-in" would be more cooperative.

Barnes said he's researched the issues thoroughly. He wants to know what more input from property owners will accomplish. There are home owners with no septic tank documentation.

Christie said he is requesting a check and balance system in any lake projects. The best thing that could have been done would have been to form a committee to investigate this issue.

Green said there will not be an unqualified resolution coming out of the meeting tonight. He feels any resolution sent to the city could include some of the contents of Christie's letter. The City is looking for some leadership from DLWID as the primary guardian of the lake for an enforceable ordinance. Monday's City Council meeting will just begin a process whereby anyone will have an opportunity to provide input. Green said we have a commitment from the City and they are looking to DLWID to help draft the ordinance.

Mark Highland: One of the things he is concerned about is that a great number of homes within 200 to 250 feet are vacation homes and are not full-time homes. Many of the people who are here in the winter time are here only a couple of times during the month. Couldn't this process be slowed down to wait until we know which nutrients are involved and what level septic tanks have affected the lake? The process is moving too fast. He is not sure how the city got involved. It seems to him that the Board is giving up some of their control. Could a statistical sampling survey be completed and paid for with DLWID funds? 366 homes are on septic. Take a statistical sample of those so that we understand it a little bit better. Is the ordinance that is being considered more or less stringent than state requirements?

Green: There is no State requirement. The system relies on complaints from neighbors.

Highland: When you put in a septic system, you have requirements. Are the County's more stringent than the State's requirements?

Green: They are the same. The County enforces the State's requirements. Our County has a good reputation for enforcement. DEQ is happy with what is being done. There is no difference in the requirements.

Highland: Said his home has a relatively new system, so this is not something he is concerned about for himself.

Skirvin: What was the situation when you installed a new system?

Highland: We just purchased the home. And a new septic system was installed prior to our purchase.

Bill Piggott: Feels the city council has made their decision. From what he heard from two of the city council members, public input is not important. Piggott said he feels his information was not considered and he is discouraged. Some believe this should be done right away. He does not believe it should happen right away. His impression is that if he got people together, they could get some ideas on how to do this. He said you don't bring out the stick at first, you wait until it is necessary. Piggott is worried about the Board alienating itself from the council. He cautions the Board to slow down. Discuss the issue with a few different people.

Larry Brown: He said he began 59 years ago skiing on the lake; his mother insisted he take tetanus and typhoid shots. Feels that except for the weed era, the lake has not deteriorated. He feels experts should test the lake and all the tributaries all through the year and over a period of time for baseline criteria. As new people come in to buy homes, they are going to want to get septic tanks updated. We need to determine the exact source and location of the problem—prove that gulls and geese are not causing it. We do not need more bureaucracy and regulation; 90% of the homes are vacation homes and their impact would be negligible even if they are failing. He would like to tell the City: "We want no part of this." We would like to have the manager test the lake further.

Barnes: What does he tell the guy who cleaned up his septic tank and spent \$30,000 and the guy next door isn't in compliance? He should have to have an inspection also. The Board has decided they want to have Seth complete his data.

Bill Zekan, Environmental Manager for the County, was introduced by Green.

Green: What would you do if you received septic tank inspection reports? Zekan handed out flow charts for different scenarios.

He said the City and the Board had requested him to speak at the Board meeting.

He held up an inspection application and said once an application is filed with the County, the flow chart applies. There is a \$505 fee required for an inspection. Records are checked. The applicant is provided a time and date for the application process. The inspector will go through the site, open the lid, check the sledge level, baffles, the condition of the tank, etc. He would need to see a distribution box that connects to the absorption facility. He would check to see if the sledge layer can collect in the box. The inspector will mark the drain field and probe to see where the lines lay. An inspection takes about 45 minutes to an hour. If a dye is inserted into the toilet, it might require a second visit. The dye glows under a black light; however, it is not always successful. Much depends on the nature of the site. If there is a direct failure, sewage is seeping. Then the dye will come up to the ground surface. It is part of the inspection process. Certain things are measurable and some aspects of the inspection rely on judgment. The dye used is expensive, but only about a cup is needed for a test since it is concentrated. Most of the tanks are 500 gallons or more. If the applicant's system passes the inspection, a report is prepared with a copy sent to DLWID. Another copy will be placed in the County records. If the system fails the inspection, a non-permitted correction will be issued with a time frame. Maintenance generally means taking the action to prevent failure, but also means cleaning the system. If you have a sand filter, you would not be issued a permit. If you don't cooperate, you fall under an enforcement program and you would be compelled to make system repairs with a 30-day notice. If you don't respond within 30 days, you would then receive a 10-day notice, asking why. If there is any way to

show that you are willing to work with the County (or have extenuating circumstances), they will not cite to the court. Bill Zekan has worked in this arena for 31 years, and has seen no circumstances where people have had to leave their homes.

Weldon: How do you cite people?

Zekan: Through the legal system, we bring them into court where they appear before a judge. This rarely happens; usually, we find a way to work it out.

Green: Any idea how many times people have had to go to court?

Zekan: Fewer than 15 in 31 years. He and his crew have a training program and have even secured volunteers who have helped some folks install systems; there are a number of stories where people have donated time and materials to help home owners. If you fail the inspection, you would need a permitted repair in one of two categories.

A licensed installer can perform the work, or the homeowner can perform the work. The installer can work with the homeowner. If effluent is finding its way to the lake, you would need a permit for \$825 for work on the main absorption field if the drain field needs to be replaced. The inspector would check to see if the baffles are in place; where is the scum layer, what is the sledge level? He would check in the drop box and the drain field.

The cost for repair of small components of the system would be \$300. If there is no cooperation, the issue would go through the court system. Copies of the final report would go to the home owner and to DLWID.

Skirvin: What life expectancy do these tanks have?

Zekan: Concrete tanks have a good reputation; however, even concrete deteriorates over time. We do not use many plastic tanks any more—there are only one or two manufacturers. Fiberglass makes some good tanks. Plastics are more buoyant and are harder to install—they have to be backfilled to the level of water in the tank. Metal tanks seem to be the ones that need to be replaced the most. Once a lid is uncovered, holes in the lid indicate that there are holes in other parts of the tank. Belco manufactures some metal tanks that are a little better. They coat them inside and outside. These tanks rust in the ten to 20-year range; however, some are in good shape after 20 years. They are still approved. The most important issue is the site of the tank installation in the first place. The job of EHS is to see that the tank is placed in the right spot to begin with. There could be instances where we might give a system a clean bill of health because we cannot prove that effluent is going into the lake. Remember, all tanks will continue to leach nitrates into the lake. Nitrates and phosphates are a product of the decomposition process. A working septic system produces these and rainwater washes them into the lake. Carbon goes into the lake from failing systems.

Green: What correlates most often with a failing system? What systems should be inspected first?

Zekan: The primary consideration should be location and age. Age equals maintenance needs. Has it been pumped? Most literature says 1,000-gallon tanks should be pumped every ten to 11 years. There is no reason to pump a tank when it doesn't need it. If you don't pump the tank when the sledge level is present, you can clog the drain field. That causes failure.

Barnes: What are the probabilities of failure?

Zekan: 30 years on a metal tank, or a modern fiberglass tank. Concrete tanks not so much.

Barnes: When you get a call on the system and there is no record, what is the probability that the system is not working properly?

Zekan: Well, I've seen systems working fine after 30 or 40 years with homemade concrete tanks.

Skirvin: From a ghost-system perspective, are there many homemade tanks? Old metal tanks? We have 130 undocumented systems.

Zekan: I've seen a variety—concrete block tanks, tin can tanks, cedar tanks, plastic tanks, water storage tanks, 55-gallon drums. Really old drains are those of terra cotta, cedar pipe wrapped in wire, orange burg pipe, plastic perforated pipe, PVC pipes and now infiltrator, plastic domes with louvers on the side. Most are 4-inch.

Strayer: We have no data base; we don't know who is failing. Is there a way to test for the worst of the worst? We could put dye in each of those systems. Have someone test around the property that has an issue. There is no State requirement to take off the lid and inspect.

Zekan: There is a requirement if you are adding bedrooms or if there is a complaint. He would be reluctant to use one small portion of the inspection process (such as the dye.) Has a list of contractors who could inspect. The County is obliged as the agent of the DEQ to compel compliance with the regulation.

Green: What actions are required for recording after an installation of a system?

Repairs have to be recorded. What about pumping? Does that need a record with the County?

Zekan: No on the pumping.

Skirvin: Is someone required to inform the County if there is a failed system?

Zekan: I believe they are obligated. Most failed tanks come to the County because people are aware, the neighbor complains or it happens with real estate transactions. There is no inspection requirement of the County.

Weldon: What percentages are we talking about—tanks that are leaking vs. those that are working properly?

Bill: Couldn't give a percentage. Nitrate and phosphorous are more esoteric. They are long-term nutrients. The soil absorption system and a properly working tank take care of disease-causing pathogens. A water-tight septic tank is critical to a properly working system.

Discussion continued regarding testing of tanks, County testing vs. private contractors, using dye as a testing agent vs. a complete inspection.

Tony Shearer: So many variables come into play with doing a dye test. Sometimes it takes a week to show up; sometimes it never shows up; you are limited to a number of colors.

Zekan: One of the most common causes for failure is the homeowner's use of too much water.

In response to an audience question, Oregon requirements demand an inspector has to be licensed for installing, inspecting and repairing in addition to that of just a pumping license.

Robertson: If you want to look at our contributing factors, 75% of the problem is probably something other than septic tank issues; 25% of the problem is septic tanks in Rock Creek water shed.

Green: We know that we can reduce the nutrients that we know about and that are septic tank issues.

Strayer: We have bids in from Dr. Raymond on doing a nutrient model.

Barnes: Seth was brought on to do the data base and he's close. We have 130 homes we can send a letter out to and maybe half of those will give us immediate data back. That would leave around 75 that might have no data. It is a moral obligation to have a working septic system.

Christie: Why can't you develop an ordinance with the County?

**Green: We will close the public comment section at this time and we will take a break.**

Lenaerts: We have looked at the properties within 200 feet with the GIS data base. We came up with fields within 250 feet. We checked the type, number of bedrooms, material, size, last action that occurred requiring County participation and whether or not there is a variance and any special notes. 387 have been checked and 121 of the developed lots have no County information. Private DEQ installers and pumpers have been contacted to see if they have any information on pump-out dates or pump-out material. There are 266 properties that we do have information on. Lenaerts created a report on this data. So there are 387 variables and 121 that we don't know about. You can make assumptions. In 1974, DEQ began regulating; anything installed prior to 1974 may have no repairs on them. Of the 266 files that we do have, all are different types of tanks. That might not be the percentage of tanks that the newer ones are and the newer ones seem to be moving to concrete from steel. There are 91 tanks we know nothing about; 40 steel tanks are older than ten years; five concrete tanks are older than 25 years. 121 we do not know anything about. Of the 266 septic tanks, 1/3 of them would fall under the proposed ordinance.

Barnes: Ray Drayton has said that all of the tanks that are under his watch are working properly. We could send out letters to people asking them to prove information. The City wants the Board to whittle the number of tanks down to the tanks we do not have any information for. We need to decide if we are going to do a voluntary program and hit the high-probability data.

Green: We are not going to have accurate data without demanding accurate data from the home owners on which we have no information. We need the City's incentive.

Strayer: Strayer read his septic ordinance comments that he provided to the rest of the Board. He thinks the Board needs to begin with scientific data to know what they are doing. The inspection program will cost \$200,000--\$505 x 400 septic systems.

Barnes: Inspections could cost only \$300 and we could get those inspections down to \$250 per home. There is something else that you did not address in this letter. Hawker's concern about E-coli. We are talking about nutrients.

Green: We are not going to know any more about where the nutrients come from if we do the model.

Strayer: Wants to get the nutrient sources from the model. Feels we should prioritize the projects.

Barnes: We need to move while the City is on board with us.

Skirvin: Dr. Raymond said the nutrient sources will not be provided by the nutrient model.

Christie: What would it hurt to give it six months or so to ask for voluntary compliance? You'd probably get 90% of them to comply.

Barnes: We met with Hawker. Only the City can force an inspection. The County will then pick it up from there. Hawker has agreed to allow DLWID to help write the ordinance. We can pass a resolution not to support him and he would pull the resolution. He's not going forward without the Board's recommendation. We are talking about 120 homes that may not be functioning properly. If they are not functioning properly, it's the law and their moral obligation to have a functioning system.

Lenaerts: The County is not going to inspect without a complaint.

Green: We know as much about the variables as we will get.

Barnes: Why is Seth doing the data if we are not going to pursue the rest of the project? We are going to do an RFP that will go to contractors to get the inspections done for \$300 or less.

Discussion ensued regarding site verification vs. full inspection.

Green: We could place in the ordinance that the home owner would have the option of doing site verification. I asked for a meeting with Hawker to agree that in the process the criteria could be considered to only require 121 homes during the first inspection, not the entire watershed, but those most likely to have failing systems.

Audience: Why does the City have to be involved?

Barnes: Because without the City, we have a volunteer program to complete Seth's data. We need the City to enforce this. If you are in the county, you get your water shut off without compliance; if you are in the city, you would get a fine.

Lenaert's: The County's is a complaint-driven system. Once there is an inspection, if there is a problem, it would precipitate a complaint with the County. The process is then taken over by the County.

Green: We need to come up with the terms of a resolution.

Lenaerts: We need a resolution that the Board is with the City in enforcement with shutting the water off. As a Board, you can make recommendations for the details.

Barnes: Read some suggestions for inspection criteria:

250 feet within two years; watershed wide, a phase-in within five years;

Systems 25 years or older need to be inspected;

Steel tanks would be inspected every ten years;

24-months to accomplish the inspections;

DLWID sets the criteria for inspection;

Tanks need to be pumped every ten years;

100,000 gallons per month usage would have to have an initial inspection;

Inspectors could be DEQ inspectors, but they would have to be disqualified from doing repairs.

Strayer: It should be basin-wide with five years.

Skirvin: Let's agree on the bullet points.

Green: We will now discuss Robertson's Resolution Draft and complete it.

Here is the draft resolution consisting of two pages, the front page beginning with a "Whereas" paragraph and the second page beginning with "Be it Resolved."

The following bullet points were agreed upon to replace the existing five, and the first page and the page beginning with an introduction "Be it Resolved," will remain as is.

That systems need to be inspected if they are 25 years or greater in age.

That systems with Steel tanks need to be inspected if they are ten years or greater.

That systems with no record with the county be inspected.

That inspection period will be 24 months after the passing of the ordinance for those properties within 250 feet of the lake and tributaries and the rest of the properties within the watershed would have to comply within five years.

That DLWID with input from property owners affected by the ordinance will help set the criteria for the ordinance in conjunction with the County and City in drafting of the ordinance.

That a DEQ qualified inspector or the County will provide the inspections.

That DLWID will help set the criteria for inspections.

That a contractor performing the inspections will be barred from performing repairs.

That the ordinance should not be structured to prevent VRD usage of properties with septic systems.

That the program shall allow for a property owner to provide historical evidence of a recent inspection meeting the criteria of the ordinance in lieu of obtaining an inspection currently. Green moved to adopt the Resolution to include the above criteria. Skirvin seconded.  
Vote: Unanimous. Motion carried. (copy of the actual Resolution is attached.)

### **Communication Committee**

Robertson: Regarding the brochure draft, Lenaerts updated the draft to change some factual items and make some graphic and copy changes.

Strayer: Do we have a communication plan? We introduced the communication plan at the workshop and would like to propose a resolution to incorporate it into the plan.

It was determined that this issue would be addressed in the March Board meeting due to the late hour.

### **Budget**

Robertson reported that one individual on the committee has resigned and another does not meet the criteria required to be on the committee. If nobody else applies and the individual who does not qualify is discounted, we have only two qualified people. We need two more people. State law says those people need to be electors in the community. It's staff recommendation that we comply with the state law.

Green: Moved to remove people not meeting the criteria by not being electors in the District from budget committee. Skirvin seconded.

Vote: Unanimous. Motion carried.

### **New Business**

Barnes: Would like to place on the agenda the possibility of Lenaerts and Robertson creating a weekly log to keep the Board apprised of weekly updates on pending and current issues.

Skirvin: Some items that could be included would be meetings with the City, etc. Provide Minutes so that the Board can provide input.

Green: Staff is going to be directed to begin the drafting of the ordinance. We need to get into that process and be told when we need to meet for our input into the ordinance.

Robertson: Are there two people who want to be invited along with staff for the meetings?

Barnes: Whoever is available can attend. Maybe the same person will not be able to attend each time. We can notify Robertson by e-mail and keep each other informed for continuity.

Green moved to approve Robertson's vacation request for March 19, 22-26. Barnes seconded the motion. Vote: Unanimous. Motion carried.

### **Adjournment**

Due to the late hour, all other agenda items were continued to the March 4 Board meeting. The meeting was adjourned at 10:30 P.M.

Respectfully submitted,  
Linda Burt

## Addendum

### DLWID February 2010 Meeting – Lincoln City Septic Ordinance – comments.

During the three years that I have been a DLWID board member, I have seen the District take considerable care, making decisions based on science while addressing the concerns of all lake users. I believe that the direction that we are taking by piggy-backing on the Lincoln City – Septic Ordinance is a deviation from the District's policy, it will disrupt our planning process, will lead to distrust by our electorate and will severely impact the future potential for sewers.

The District has asked for bids to establish a Devils Lake Basin - nutrient model. We have one bid that we are considering from an outstanding environmental scientist that will show the relationship between nutrient sources and their causes. From this scientific framework the District can identify and define projects, calculate their benefits and costs, and prioritize them for action and funding.

The City's proposed septic ordinance will disrupt the District's planning and redirect considerable resources to a project that will not fix the nutrient issues in the lake. Properly functioning septic systems slow the nutrients progression to the lake or water table. Only sewers remove the nutrients from the basin.

The Devils Lake Basin Model will address all nutrient projects, including the septic inspection project's benefits and costs. After this analysis, the septic project will take its place in the District's priorities. The proposed Ordinance will assess over \$200,000 dollars for inspections alone, which is not unlike a tax on our electorate.

If the District endorses the City's ordinance, there are a number of equity issues that may not be addressed. Some lake owners may have extreme hardships based on, health, finances, accessibility of the lake property, disruption to decks and landscaping, and geography of the lot. The septic program should allow for reasonable mediation based on hardship, nominal use or minimal lake impact. The District has a responsibility to protect the rights of its small underrepresented groups like the lakefront owners.

**The District should proceed with its nutrient planning and analysis, and delay endorsement of the City's Septic Ordinance until the Devils Lake Basin – nutrient model is completed, projects are identified, benefit/costs are developed, and priorities are determined.**

Jack Strayer – Director  
Devils Lake Water Improvement District