MINUTES
STATE PRESERVES ADVISORY BOARD
JUNE 16, 2005

BOARD MEMBERS PRESENT - TELECONFERENCE

Neil Bernstein, Chair
Robin Fortney
Cindy Peterson
Liz Christiansen
Armando Rosales
Laura Jackson

STAFF PRESENT – WALLACE BUILDING

John Pearson
Mike Smith

CALL TO ORDER

Chairperson Neil Bernstein called the meeting to order at 12:05 PM on June 16, 2005 from a teleconference call at the Wallace State Office building.

Armando Rosales will be a new member to the board starting with the July meeting.

POWERS AND DUTIES OF THE PRESERVES BOARD

(An outline of questions and answers was distributed to all board members from Mike Smith, the Attorney General, who then responded to additional questions during the teleconference.)

1. Should the Board evaluate how a proposed preserve would fit into the physical and social landscape?

Mike Smith said that an administrative body has the statutory authority expressly delegated by the legislature in its enabling legislation and the authority that is necessarily implied in order to carry out the powers and duties that are expressly delegated. In evaluating whether to approve dedication of specific land as a State preserve, the Board necessarily has implied authority to consider alternatives to dedication, alternative preserve boundaries, and alternative dedication provisions. Considering such alternatives are part of the process of exercising reasonable judgment about what land should be dedicated and what provisions should be included in articles of dedication. You need to know what the conflicts are and what the anticipated conflicts could be. What's in the public interest when dealing with the conflict issues.

2. Can the Board negotiate with the landowner(s) concerning location of preserve boundaries and contents of articles of dedication?
Mike Smith said yes. See answer to #1, above. If a landowner proposes something that the board sees as a potential problem for one or more reasons. If there's a way to resolve the problem by modifying the boundaries or modifying the provision for dedication, that is within the power of the board. You are not obligated to what they proposed, if they are not satisfied then there wouldn't be a dedication.

Laura Jackson asked how much the board should second guess the public's concern of the board's intention in making a decision to protect or extend a preserve?

Mike Smith said that we need to be cautious when adopting new preserves or additions when the primary purpose is as a defensive measure.

Neil Bernstein said that the primary duty of the board is to identify properties, structures, or geological features, such unique quality that it's in the best interest of the state in our judgment that they preserved. If we have such a duty, then it's our best judgment that we advise the Governor that we feel this should be preserved. This may cause conflict with several other public plans, but the Governor can choose to research the issues.

Mike Smith stated that since the board receives a majority of the public comment, the Governor should be informed of the conflicts on a proposed preserve. Jeff Vonk quoted, "You ought not dedicate land to a preserve to stop something at the same time you ought not to avoid dedicating something worthy because of a conflict."

Laura Jackson said that the reason Rock Island Preserve is so good is because of the land around it is not housing, highway or corn fields. Once the context of any preserve changes through development then we go from having a high quality preserve to one that is vulnerable to significant degradation. If the land is not protected by a buffer, the land will be trashed by activities that go on next to it.

Mike Smith said that buffering is an important issue. I believe you do have a valid point, though I'm not sure that buffers are created only by extending preserve boundaries.

Neil Bernstein said that as the state and cities grow, controversy will also grow. You can hardly "develop" anything without having some sort of controversy.

3. What is the meaning of "permanent injunction?"
Mike Smith said that an injunction may compel or prohibit specific conduct. Commonly, a permanent injunction would be in effect until the person or body being enjoined complied with the requirements by doing what was compelled or remedied a condition that caused a prohibitory injunction to issue. In contrast, "temporary" restraining orders and "preliminary" injunctions are court orders issued to compel or prohibit specific conduct during the litigation before the court has made any decision about whether to grant a "permanent" injunction.

4. Can the Preserves Advisory Board be sued?

Mike Smith said yes, probably for refusing to approve dedication of land as a State preserve; or breaking the open meetings law or possibly for approving dedication of land as a State preserve (although a defense would be that approval is only a recommendation to the Governor). Except in unusual circumstances, the Board would be defended by the Attorney General's office.

5. If the Preserves Advisory Board recommends approval of preserve status for land that is not in the custody of the DNR, is approval required from the Natural Resource Commission?

Mike Smith said no. NRC's only express function in relation to preserve dedication is approval of DNR acquisition of land that is to be dedicated as a State preserve. See Iowa Code § 465C.8(4). The NRC may have a role in approving dedication of land that is in the custody of the DNR. See § 465C.8(3) (Board's power to recommend dedication of state-owned areas under jurisdiction of the department) and § 455A.6(c) (NRC authority to approve acquisition or disposal of state lands relating to conservation programs).

6. What action should the board take regarding the public comments received on certain proposals?

John Pearson summarized what the board has previously done with public comments. 1) We solicit for public comment by posting the information on the website and sending out press releases. 2) Make hard copies of each comment and distribute to the board members for their review. 3) At the next meeting, the board members summarize their own comments, which become a part of the minutes.

Mike Smith said that the process is fine. There is no formal requirement for what to do with the comments, since you are not required to solicit for them. But since you ask for public comment, be sure that you acknowledge them. You are not bound to a majority comment outcome.

NEXT MEETING

July 8th, 2005 – 8:30 AM Lime Creek Nature Center - Mason City

ADJOURNMENT

With no further business to come before the State Preserves Advisory Board, Chairperson Neil Bernstein adjourned the meeting at 12:55 PM on June 16, 2005.

Motion was made by Laura Jackson to adjourn the meeting. Seconded by Robin Fortney. Motion carried unanimously.

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A

Adjournment, 4

B

Board Members Present, 1

C

call to order, 1

N

Next Meeting, 4

P

Powers and Duties of the Preserves Board, 1

S

staff present, 1