

MINNESOTA ENVIRONMENTAL QUALITY BOARD
MEETING MINUTES
Thursday, February 16, 2006
State Office Building, Hearing Room 5

EQB Members Present: Brenda Elmer, Dana Badgerow, Jonathon Bloomberg, Sheryl Corrigan, Jerome Deal, Gene Hugoson, Dianne Mandernach, Susan McCarville, and Gene Merriam

EQB Members Absent: Robert A. Schroeder, Matt Kramer, Lt. Governor Carol Molnau, Glenn Wilson, and Paige Winebarger

I. Adoption of the proposed Agenda for the February 16, 2006 meeting and Minutes from the January 19, 2006 Environmental Quality Board Meeting

Commissioner Mandernach made a motion that the minutes and proposed agenda be adopted and Member Deal seconded. The motion was approved on a voice vote.

II. Executive Director's Report:

Michael Sullivan gave an update on Phase I rulemaking. The official comment period began February 13, 2006 and will end on March 15, 2006. The staff will be able to report at the March 16, 2006 EQB Board Meeting on whether or not 25 individuals request a formal hearing on those rules. If a hearing is required, it will be held on March 30, 2006 with Judge Steven Mihalchick presiding. Mr. Sullivan stated that Judge Mihalchick was the ALJ for the Board's recreational trail rules, so he is familiar with our institution and us with him. Again, depending on whether or not a hearing is needed and the nature of any comments received, the EQB staff expects to bring the amendments back before the Board for final adoption between April-June.

III. Legal Counsel Report:

Robert Roche stated that there was nothing new to report.

IV. * Notice of Intent to remove land from Agricultural Preserve status in Waseca County

Jon Larsen, EQB staff, stated that the packet for the Notice of Intent for removing agricultural land from the agricultural preserve program is the same as what was presented in the January packet with three important additions. One is a letter dated January 19, 2006 from Paul Dressler, the county attorney for Waseca County that amplifies the discussion of analysis of the alternatives considered for this action. There is also an e-mail from Angela Knish, the Planning and Zoning Administrator for Waseca County, giving additional details about the evaluation process of an alternative site in that matter. Mr. Larsen indicated that Angela Knish is present this morning and has additional information that she is willing to impart to the Board. She also has maps that help explain the process by which Waseca County made their determination that this is an appropriate selection

Testimony:

Angela Knish, Planning and Zoning Administrator for Waseca County, stated that she is going to go over what in that memo to Jon Larsen on February 9, 2006 and indicated that she has brought some maps of Waseca County highlighting that particular area. Ms. Knish indicated that the areas blackened out on her map are lands of agricultural preserve located in Waseca County adjacent to the DM&E railroad. The DM&E railroad runs north and south through Waseca County and stops at the switching station in the City of Waseca and then the line runs east and west. Just south of Waseca County, approximately within 5 miles, that DM&E line turns into a Union Pacific line.

On the map, there are some areas that were considered for the ethanol plant. There is an area adjacent to the City of New Richland. There is an industrial site south of there, there is about a one mile stretch (of land contiguous to the DM&E line) within there. Some of the siting criteria for the ethanol plant are:

- that it needs to be located within a certain proximity to a highway,
- proximity to a railway,
- proximity to a gas pipeline,
- they have to have a willing land seller, and
- they need to have enough area for 4-5 spurs for the rail line.

One of the problems that the City of Waseca is having is that their switchyard, is located directly downtown and they have had some problems with some safety issues and blocking traffic. Any further movement of those railcars north into the City of Waseca and then having to switch onto to an east/west rail line would further compound that particular issue.

In her discussions with the county attorney, Paul Dressler, the DM&E railroad has been issued 12 citations in the last 12 months for blocking road rights-of-way for more than 10 minutes. DM&E is making attempts to correct that problem; they are looking to move that switching yard further west of town. They are also looking to upgrade this line as the coal trains come through, if that project gets through.

Ms. Knish indicated that one particular site is located adjacent to the Waseca Municipal Airport and that has been considered a site for several industrial projects. There are problems with that in locating an industrial business there because of the conical zone of the airport so there are height restrictions that apply. Ms. Knish spoke with Matt Sederstrom from Fagin Engineering for this ethanol project and he stated that their tower would be approximately 175 feet tall and could not get under that height restriction at that location.

East of Waseca to the Steel County line, shown on a topographical map, there are a multitude of wetlands in that area that are scattered throughout. There are two lakes, Clear Lake and Goose Lake, and a wildlife area just bordering the Steele County line. Those are wetlands from the National Wetland Inventory; that does not include all wetlands. A full delineation would need to be done to include all of them.

There is the new Highway 14 going through that area, and they (MnDOT) also avoided that area because of those wetlands. The other map shows the new alignment of the old and new Highway 14. The new Highway 14 goes to the south and drops south of Waseca; the old one runs north. Throughout the middle of the county between the cities of Janesville and Waseca, the DM&E railroad line is bordered directly to the north by the old highway and directly south by the new one. There is no access to the rail in that area.

That leaves the targeted site for the ethanol plant; and that land is under an agricultural preserve covenant. In that area, there is one other possible site, but in the Highway 14 map, there is not the adequate area that the ethanol plant's needs. They need at least a one mile long length of railroad that is uninterrupted. About one mile into the county, the new Highway 14 crosses over and heads south into the City of Janesville and there is not adequate room for it there. Therefore they (Waseca County) are asking for this site to be removed from agricultural preserve status.

Commissioner Merriam stated that Ms. Knish has talked about criteria that are necessary for an ethanol site. Ms. Knish stated that she was given a list of criteria from the Fagin Company. Waseca County did not have that criteria, but recently received that. Mr. Merriam asked who the Fagin Company is. Ms. Knish stated that it is her understanding that U.S. Bioenergy is the parent company that will be doing the ethanol plant, but the engineering company that looked for an adequate site is Fagain Company.

Commissioner Hugoson stated that the Fagin Company is a construction and engineering company, so they are the company that builds ethanol plants. The criteria that are being referenced are just good business practices criteria that are necessary for any site evaluation by any ethanol plant. It is not anything that is in statute or rules; it's just standard operating procedure in determining what makes a good site for an ethanol plant.

Commissioner Merriam asked if all the other ethanol sites meet all of the criteria that are governing the search process. Commissioner Hugoson stated that not all of them do, but all of the recent ones would. This is knowledge gained through experience. There were a few sitings early on that proved to be a problem and so for that reason, this is the recommended procedure that has developed since then. There was an ethanol plant in St. Paul that proved to not be a good idea, so there have been unwritten policy considerations to follow (since then). Commissioner Merriam asked, in considering alternative sites, is there a list of "druthers" and a list of things that are mandatory? As Waseca makes a judgment (and the Board passes on that judgment only because it relates to an agricultural preserve), whether the criteria drove us to a place where there was no other alternative; or whether it's slightly better in terms of the underlying business decision?

Commissioner Hugoson stated that when a site is being considered, all the factors come into play. For instance, the soil conditions have to be correct to support a structure like this. MnDOT has restrictions in terms of a location or access into a facility from an all-weather road, so it has to be done in a place that will work for MnDOT. There has to be access to a gas line so if the natural gas line is several miles (away) then the cost has to be considered for putting a spur line into the new facility; and that adds to the overall cost and potential financial worth of the project. There also has to be a rail line. So, if the rail line is not near, land has to be

acquired to build a spur to the facility. All those things come into play when the “doability” and cost factors are considered.

Commissioner Merriam stated that what the Board has to consider is not whether it’s a good idea to have a plant; or whether it’s a good idea to have a plant in Waseca; or to substitute our judgment for that of the county board; but whether it has an unreasonable effect on the agricultural preserve. Commissioner Merriam wanted to clarify that Ms. Knish stated that this would end the agricultural preserve. Ms. Knish stated that for this particular parcel, that is what they are requesting. They are asking to condemn the land so that the entire parcel so that the agricultural preserve will no longer apply. One of the other ways out of the agricultural preserve is to remove the covenant; that process takes 8 years. The legal documents must be filed, the tax credits are immediately ceased and then the terms of the contract go another 8 years before the land can be converted to another industrial, commercial or residential use. Ms. Knish stated that she believes it is also the Waseca County Board of Commissioners intent by allowing this site to be taken out of the agricultural preserve and used for an ethanol industry, it will enhance the remaining acres of land in Waseca County for agricultural use because they will have a new market for their corn goods. Within a 50 mile radius of this site is where they look for that corn to come from.

Member Elmer asked Ms. Knish to go back to the citations against the rail for blocking the right-of-way. Ms. Knish stated that she ran across something in conversation in talking with the county attorney; he noted that in Minnesota statute 219.383, (it’s called Safe Operation of a Train Over Road) is a penalty. In subdivision 3, it says “Not to block a public road or street. No railway corporation shall permit a public road or street crossing, a railroad track to be closed for traffic by a standing car, train engine or other railroad equipment or by switching movement which continuously blocks a crossing for longer than 10 minutes. This subdivision does not apply to cities of the first class which regulate obstruction of streets by ordinance.” The attorney noted to Ms. Knish that they have been cited 10 times in the last 12 months. It has been an ongoing problem in the community that the switching yard is located in the middle of (town at) State Highway 13 running north and south and U.S. Highway 14 running east and west. Just to the west of that intersection is the switching yard. They are working to move the switching yard out of town; located about two miles out of town, in the airport conical zone. Ms. Elmer wanted to confirm that it is part of their action plan to alleviate the issue. Ms. Knish stated that is another reason that the north/south DM&E rail line was not considered because they would have to get on that east/west track and it would cause further congestion and create more problems.

Vice Chair Elmer stated that there is a resolution before the Board as amended with Vice Chair Elmer’s name in place of Bob Schroeder. Commissioner Hugoson moved the resolution and Commissioner Mandernach seconded. Vice Chair Elmer called for a roll call vote which passed 9-0.

V. *Expansion of Flying Cloud Airport Environmental Impact Statement adequacy decision

Jonathon Bloomberg stated that before Jon Larsen begins his presentation, he wanted to note for the record that the Metropolitan Airports Commission is a client of his so Mr. Bloomberg will not be participating in the decision making and discussion around this matter.

Jon Larsen stated that this agenda item was discussed at length at the January meeting and as a consequence he will not go over those matters. In the packet, in addition to the materials received last time, there is a copy of the letter of comment that Mr. Scott Kipp from the City of Eden Prairie read into the record at the last meeting. This is the official transmitted version of that letter. Also in the packet is a copy of the Categorical Exclusion Declaration on the part of the Federal Aviation Administration regarding the Class B Airspace matter, in which they disclose their analysis of 'no impact' potential for that action; and as this might relate to the Flying Cloud decision. There is also a copy of a new letter from Talktrans/Zero Expansion that is addressed to each Board member, and is their comment after the meeting in January.

Mr. Larsen proceeded to the Findings of Fact, noting in item 8 that the staff has updated the chronological history to reflect the discussion last meeting; and that it appears again before the Board today. Also, the list of documents does include the documents that are in the packet today, as well. Mr. Larsen indicated that representatives from the Metropolitan Airports Commission, Mr. Gary Warren, the Director for Airside Development; Bridget Reif, the Project Manager for this environmental review; and Chad Leque, with the noise program are all here and able to respond to any questions.

Testimony:

Mark Michelson, spoke on behalf of Zero Expansion/Talktrans, which is a citizen organization out of Eden Prairie. Mr. Michelson stated that it would be their preference, regarding the pavement-based weight restriction in the Ordinance 97 agreement, to get a letter from the FAA that would uphold the 60,000 pound weight restriction. In the absence of a letter like that, that is legally binding, the FEIS does not [restrict] aircraft that are over 60,000 pounds. The FAA will not uphold the 60,000 pound weight limitation; they have shown that it is not a limitation that is going to be part of their national policy. Mr. Michelson stated again is that their preference is to get a legally binding letter from the FAA that withholds the 60,000 pound weight limitation. Without that letter, the FEIS is inadequate because it does not address aircraft over that weight limitation. An aircraft that weighs more than 60,000 pounds is going to make a lot more impact than aircraft that weighs 4,000 to 5,000 pounds, which is a typical aircraft at Flying Cloud Airport.

Mr. Larsen called attention to the sample resolution which would be to adopt the Findings of Fact, Conclusions and Order that would find the FEIS for Flying Cloud to be adequate. Mr. Sullivan stated that there would have to be a modification to the resolution. Mr. Larsen stated that the change today is that Vice Chair Elmer is chairing the meeting and the resolution should be for her to be authorized to sign those adopted findings.

Robert Roche stated that this is a decision not to approve or deny the project; this is not a permitting decision. As the Findings of Fact indicate, ruling that an EIS is or is not adequate is not an approval of the project or a disapproval of the project itself. It is a finding that the information gathered, developed and presented in the EIS is in conformance with the rules governing the preparation, saying that the information is there and it can be used by those agencies and entities which will issue permits. Also, if the Board determines that the EIS is not

adequate, then the EQB rules require that the MAC develop information that would make the EIS adequate within 60 days, which is rule 4410.2800, subp. 5. Mr. Roche suggested that if members have concerns about the adequacy of the EIS that rather than voting that it is not adequate, that those concerns be fleshed out so MAC can go out and be advised what information would satisfy the Board.

Vice Chair Elmer stated that there is a resolution before the Board, as amended, with Vice Chair Elmer's name in place of Bob Schroeder. Commissioner Corrigan moved the resolution and Member Deal seconded. Vice Chair Elmer called for a roll call vote which passed 8-0, with one abstention.

Vice Chair Elmer asked for additional questions and seeing none, asked for a motion to adjourn. Member Deal made the motion to adjourn and Commissioner Mandernach seconded the motion.