

On road issue, Lac du Flambeau town supervisor negotiates on his own

Hanson: 'I saw there was nothing much going on between the town and the tribe'

By Brian Jopek
OF THE LAKELAND TIMES

The Lac du Flambeau town board and Lac du Flambeau Band of Lake Superior Chippewa Indians Monday reached agreement on a temporary re-opening of four roads the tribe had closed on Jan. 31 because easements on portions of those roads designated as tribal land expired a decade ago.

Since the closing of the roads, there has been much in the way of finger pointing but not much else as property owners on or near Annie Sunn Lane, Center Sugarbush Lane, East Ross Allen Lane and Elsie Lake Lane have been barricaded and, for the most part, caught in the middle of the dispute between the tribe, title insurance companies and the town.

In the days leading up to the formalization of the 90-day agreement on Monday, at least one member of the Lac du Flambeau town board, Bob Hanson, was diligently working behind the scenes on the issue.

So diligently, in fact, Hanson, a retired attorney and also a Vilas County supervisor, went as far as writing an email to Bridget Hubing, an attorney hired by one of the title insurance companies to represent several of the property owners affected by the road closures, that he felt some of the statements she'd made at special town board meetings in February as well as in newspaper articles were, in Hanson's view, not helpful.

"We need you to help us by standing down," he wrote in the Feb. 28 email to Hubing. "Please stop inflaming the situation with ill-considered statements, and let the parties get this issue to resolution."

Hanson concluded his email to Hubing, in which he also took U.S. Senator Tom Tiffany to task for statements he's made regarding the issue, by telling Hubing "we were very close to success quite recently, but the contributions of outsiders such as yourself managed to derail the plan."

"Please limit future statements to constructive and helpful ideas, or, better yet, simply don't interfere," Hanson wrote to Hubing. "In my view, you are doing more harm than good."

He signed the email with his name, state bar number and identifying himself as a member of the town board as well as the fifth district supervisor on the Vilas County board.

Hubing immediately forwarded the email to Lac du Flambeau town attorney Greg Harrold, telling him she didn't intend to respond to Hanson.

Hanson was asked by *The Lakeland Times* this week if that letter was sent by him as a town official.

"No," he said. "I may have indicated I was a town board

supervisor but as I recall, usually on those things, I indicate I am not speaking for the town board."

Proposal to Tribe

Hanson also put together, and by his own admission, delivered to tribal government officials a "Draft Agreement Proposal #2" before he presented the draft proposal to town chairman Matt Gaulke and town supervisor Gloria Cobb for their consideration.

"The town agrees to concede to the Lac du Flambeau Ojibwe Nation jurisdiction, ownership and responsibility for the above-named roads located within the boundaries of the Lac du Flambeau Ojibwe Reservation and the boundaries of the Town, contingent upon a vote of the electors at a special town meeting," Hanson's draft proposal reads.

Among the 29 roads listed are the four roads involved in the current situation along with Thorofare Road, Artishon Lane, Big Thunder Lane, Mitten Lake Road, Pokegama Lake Trail, Thunderbird Lane, Wayman Lane, Florsheim Road, Moccasin Lane and Woodtick Lane.

His draft proposal to the tribe includes wording to the effect that during a 90-day period in which the four roads would be re-opened by the tribe "the concession of the (29) above-named roads shall be accomplished."

"If the named roads are not conceded prior to the expiration of that ninety (90) day period, it is anticipated that the Tribe may put the barriers in place again until such time as concessions are completed," Hanson's draft continues. "As part and parcel of this compact, both parties affirm that the Indigenous Community within the boundaries of the Town are citizens of the Town with all the rights and privileges appurtenant thereto, and the Town shall defend and protect the right of that community to participate in Town governance."

As part of his proposal to the tribe, Hanson also offers land purchased by the town last year for \$500,000, land that will be used to construct a new fire and ambulance station.

Town electors voted to purchase the property and also approved construction of the new facility.

Hanson, who was opposed to and voted against that land purchase, outlined an offer for the tribe in his proposal.

"It is further agreed that the Town shall quitclaim thirty-two (32) acres of the Raven Lake firehouse parcel to the Tribe, as satisfaction in full for any unpaid easement leases on Elsie Lake Lane, East Ross Allen Lake Road, Annie Sunn Lane and Center Sugarbush Lane, again contingent upon a vote of the

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Until proven in a court of law

The issue with wake boats and wake boat ordinances

By Beckie Gaskill
OF THE LAKELAND TIMES

"We live in a litigious society," said retired lawyer Richard Phillips of Last Wilderness Alliance at the recent Vilas County informational workshop entitled, "Local Regulation of Hazardous Wakes." Part of the workshop looked at not only the laws in Wisconsin that would seem to have bearing on this controversial issue, but also how hazardous wake issues may, or may not, be able to be proven in a court of law. Questions such as "What constitutes a hazardous wake?" and, "How close does a boat need to be to another boat to be considered approaching or passing?" came up over the course of the day-long workshop.

Department of Natural Resources boating law administrator Darren Kuhn spoke to the group of 100 people at the Boulder Junction community center about the things he could, and could not, attempt to prove in a court of law and how that would relate to a hazardous wake ordinance. Wake boats and wake surfing, he said, is the fastest boating growing trend in the country. Every day he has dealt with some issue around the subject.

He spoke about current statutes that are on the books that conservation wardens are charged with enforcing. He also spoke about warden authority. The common misconception is that wardens can enforce any law in Wisconsin. However, by statute, they are restricted on what they can and cannot enforce. He said he would talk about the regulations about which he, as a warden, could do something about. One area where wardens do not have the ability to enforce anything is in the area of local boating ordinances.

"Our staff cannot enforce your rules," he told the group. "That's going to fall back on your local boating patrols and your town constable or whatever enforcement tool you have for your local unit of government."

He then spoke about the civil forfeiture violations that were currently on the books in the state. There is a statute stating boats must operate at slow no-wake speeds within 100 feet of any shoreline, dock, raft, pier or buoyed restricted area on any lake. Slow-no-wake speeds are also enforced on lakes of 50 acres or less.

Another statute provides a civil forfeiture for creating a hazardous wake. That statute states that "no person shall operate a motorboat so as to approach or pass another boat in such a manner as to create a hazardous wake or wash." The problem, he said, is that there is really no definition for what constitutes a hazardous wake or wash.

The third statute addresses aquatic invasive species. This statute re-

quires the draining of all water from watercraft, which includes ballast tanks. He said it may be one of those "you know it when you see it," type things, which makes enforcement difficult. The warden would be the person who would be able to testify that an act, which he or she probably did not see, was a hazardous, when there is no definition of what "hazardous" actually is. He said one person's definition of hazardous may be completely different than another person's.

"How do we define hazardous?" Kuhn asked. "Does someone have to get hurt? Oh, that's easy — somebody gets hurt, somebody gets capsized, or there's an accident or a boat incident? That's pretty simple. But just a pass by, trying to testify in court and convince possibly a jury that this is hazardous makes it difficult."

When it came to invasive species, he said, there were three sections of statute that addressed what could not be done with aquatic invasives. While that may seem like those statutes would cover the issues with wake boat ballasts, again, Kuhn said, proving beyond a reasonable doubt that a boat contained water in its ballast, when there is often no way to see into that ballast tank, would be impossible to prove beyond a reasonable doubt in a court of law. Further, he said, the idea that a person could be stopped simply because of the type of boat they were in, was not a reason to stop a person, either, especially if a warden did not likely see the boat in operation and would have no way of knowing whether the boater even filled the ballasts. A law enforcement officer, he said, needed reasonable suspicion of a violation in order to stop a boater.

"Water pumping out of the side of the boat when they leave the boat landing — no problem," he said. "Puling out of a boat landing with a big old salad of weeds on their axle - no problem. A boat that just pulled off the boat landing, just because it is a wake surfing boat, and because there is some data that not all the water can be drained 100%, that's not enough." Kuhn said it was obvious that ballast tanks would have to be drained at the best of the boater's ability, however, as it would be impossible to pull the boat out of the water with 5,000 extra pounds of water in the ballast tank. He said he would not argue that there was or was not residual water. However, simply because a boat pulls out of the water did not mean the ballasts contained water. Even a study showing an average of eight gallons of water in the ballasts of boats involved in that study was not enough to turn on "the red and blue lights" and pull that person over. While it would be easier to

see water left in a ballast bag, the same could not be said for the new ballast tanks that are found in boats now.

"We've all seen Law and Order, or whatever shows," he said. "That's the situation that our wardens are in."

Kuhn said there was one criminal violation on the books regarding boating. That is the negligent use statute. This states that "no person may operate or use any boat in a careless, negligent or reckless manner so as to endanger that person's life, property or person or the life, property or person of another." This negligent operation, he said, is a misdemeanor violation, which means it could carry up to six months in jail as well as a fine. That said, the district attorney in the county would be the one to decide whether or not to issue a criminal complaint. He said the only cases of which he were aware where the boater received jail time were cases in which someone was actually seriously hurt in near-death type accidents. Even in a case where a boater on Lake Winnebago seriously hurt over 20 people, it was still unclear whether that person would receive any jail time for the incident.

Local units of government, Kuhn said, did have the ability to craft local boating ordinances by state statute. While a specific type of boat could not necessarily be banned, because of constitutional and public trust doctrine questions, but restriction of activities was within the scope of a local unit of government.

The DNR is statutorily required to review any proposed boating ordinances. The purpose of the review is to help the municipality strengthen their proposed ordinance. The review will answer questions such as if the ordinance is constitutional, if it is legal and if it is enforceable, he said.

Kuhn said many proposed ordinances come with a stipulation on wake height. However, these would not be enforceable. It would be impossible, he said, to measure a wake with a ruler to say unequivocally that the wake was over two feet, for instance. He said a reading would be needed in a court of law to prove it violated the ordinance. He also ran through a scenario and what it would sound like in a court of law without proper proof.

Kuhn said the DNR's role in the review was to try to ensure that if someone did sue the municipality over the ordinance, that it would be seen as enforceable. He said the department would attempt to help the municipality ensure the ordinance was not only enforceable, but also effective and that it was legally strong. The department, he said, would not approve or deny an ordinance, but would instead

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Snow

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He said homeowners should evaluate the structural integrity of their home to determine what snow load they may be able to support. Once building codes were changed in 1985, Hunt said, it would take some major accumulation to have a collapse, but ice dams are the real danger, especially this year.

Appliance vents and gas meters

Matt Cullen of Wisconsin Public Service said homeowners should also be aware of their gas meters, as well as appliance vents. Gas meters can be damaged by shoveling, however, so Cullen recommended using a broom or hands to clear snow and ice from the meters. It is also a good idea to remove snow from roofs that are above those meters, to keep snow and ice from sliding off the roof onto the gas

meter.

Cullen also warned that furnace exhaust vents should be kept free of snow and ice as well. Build-up of snow around these vents could cause harmful carbon monoxide to come back into the home. Carbon monoxide is odorless and tasteless, and carbon monoxide poisoning can happen easily in winter without proper venting of heating equipment. Homeowners should also consider dryer vents and any other vented appliance when removing snow.

Cullen said if a WPS customer should smell natural gas, either inside or outside of their home, they should leave the area immediately. Once at a safe distance, they should call WPS, who will then send crews out to find and fix the gas leak. The phone number for emergency gas leaks is 800-450-7280. If carbon monoxide is suspected, people should leave the home or building immediately and dial 911.

Beckie Gaskill may be reached via email at bgaskill@lakelandtimes.com.

Trails

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Silent Sports Trails

The Rhinelander Area Silent Trails Association (RASTA) has reported their trails have been decked and groomed, according to a recent Facebook post. With the possibility of heavy snow again on Friday, those looking to

hit RASTA's trails, or other trails in the Northwoods, should keep an eye on social media and be sure to get trail conditions before heading out. It will all depend on the timing of the storm and when volunteers can get out to get the trails back into shape again.

Trail conditions can also be found on the Travel Wisconsin website at TravelWisconsin.com/snowreport.

Beckie Gaskill may be reached via email at bgaskill@lakelandtimes.com.

Hanson

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electorate at a special town meeting," Hanson added in his proposal.

He acknowledged this week to the *Times* he went to tribal government with the proposal before running the idea past Gaulke and Cobb.

"I wanted to get a feel for whether or not the tribe was interested in it before I presented it to the town board," Hanson said. "I was unlikely

to get approval at the town board unless the tribe was interested in it."

He told the *Times* this week that 32 acres in his proposal to the tribe "probably isn't going to be available but we have other land."

"The problem with the firehouse parcel is it has a \$500,000 mortgage on it," Hanson said. "The fair market value was roughly \$70,000 and the town ended up paying \$550,000 for it, over my protest. I had suggested if we really needed that parcel, we should get it by

condemnation ... we got royally bent over on that one."

As far as the tribe's 90-day offer to the town on March 10 that led to the agreement in place as of Monday, Hanson couldn't say whether that time frame came from his draft proposal to the tribe.

"I don't know," he said. "I can't speak to that. It may have given them (tribal officials) some ideas but I have no indication it (the 90 day time frame) was based on that."

With that draft proposal, Hanson

said his intent was "to simply get things moving."

"I saw that there was nothing much going on between the town and the tribe," he said. "We have these people who are barricaded out of their properties. I just felt it was my job to get something moving for them and try to get something underway so we could get them back in there before spring, anyway."

Brian Jopek may be reached via email at bjopek@lakelandtimes.com.

Wake

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give advice and guidance about the ordinance.

Kuhn also spoke about education and outreach in boating. He said historically the focus was on wearing life jackets and paddleboat safety. He said this year an additional focus would be on wake boats and the Wake Responsibly campaign.

Kuhn equated wake boating to trapping in a slight way. While trapping is a part of Wisconsin's heritage, it is not always completely accepted by everyone in the state. The same could be said for wake surfing and the use of wake boats. Each person in these groups, bow fishing groups or other groups of hunters and anglers, he said, is a representative of an entire group. If one person in one place is "doing it wrong," others in other places will view all involved in the sport as doing something wrong as well.



BECKIE GASKILL/LAKELAND TIMES

Department of Natural Resources boating law administrator Darren Kuhn spoke with a group in Boulder Junction about the difficulty of proving some boating violations in a court of law.

Kuhn also spoke briefly about grants for local boat patrols, as well. More information about that program can be found on the DNR website dnr.wi.gov.

Beckie Gaskill may be reached via email at bgaskill@lakelandtimes.com.

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