

Enforcement of Boating Ordinance

INTRODUCTION

The Town Board has questioned how to effectively enforce its boating ordinance since it adopted the following on November 17, 2016: [Revised Citation 95-02D](#), Revised Ordinance Designating [Town Road Highways as Snowmobile Routes 94-02F](#), and [Revised Boating Ordinance 93-1C](#) ([Agenda](#), [Audio Recording](#)).

At its regular meeting on [June 6, 2018](#), the Lac du Flambeau Town Board met with Tribal Conservation Warden, Elliott Rising Sun, to discuss whether Tribal wardens would consider enforcing the town's boating ordinance. Officer Rising Sun indicated the wardens would be willing to work with the town ([Agenda](#), [Audio Recording](#), [Minutes](#)).

In responding to a question at the town's budget hearing on November 20, 2018, town officials said they believe the town's attorney has been working with the Tribe on the issue ([Agenda](#), [Audio Recording](#), Minutes Pending).

BACKGROUND

August 17, 2016. At its regularly scheduled meeting on August 17, 2016, the town board "discussed a sticky situation they've recently come across - a legal contract is needed for the Vilas County sheriff's department to help enforce town ordinances." (Lakeland Times, August 23, 2016, page 4).

According to the town chair, Matt Gaulke, "one incident created one big question." Evidently, residents of a local lake recently sought help from the county sheriff's department in response to boaters causing waves in a no-wake zone in violation of a town ordinance. Though Tribal police were dispatched, the town has learned that neither Tribal or county police can currently enforce town ordinances ([Agenda](#), [Audio Recording](#), [Minutes](#)).

The [minutes](#) of the town board meeting held on August 17, 2016 include the following statement. Italics added.

It was brought to the town attention that one of the lakes with a prohibited no wake ordinance was being violated by some people. A call was made to the Vilas County Sheriff who in turn dispatched the tribal police and the tribal warden however we were informed that they are unable to enforce our ordinance. Mr. Gaulke called Sheriff Fath who stated that Vilas County does not enforce our ordinances unless they are contracted with the town. Mr. Gaulke called Tribal Chairman Henry St. Germaine and ran it by him that perhaps we could contract with the tribal police/wardens to enforce our ordinance. Tribal Chairman Henry St. Germaine told Mr. Gaulke to run it past his board

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and he can bring it to the next council meeting. There are a lot of areas that need to get worked out. Other options such as a constable, our own boat patrol which we had in the past but there were insurance issues as he was an armed officer. We need to contact our attorney to see what options we would have with any of our ordinances. We will try to have our attorney at our next meeting to further discuss this matter.

September 21, 2016. The town's attorney was to have attended the town board meeting on September 21, 2016 to address enforcement of town ordinances. He did not, however, attend the meeting. ([Agenda](#), [Audio Recording](#))

The unofficial minutes of the meeting provided by the town clerk include the following statement. Italics added.

The town's attorney was scheduled to be present for today's meeting however he is tied up at the office with an unexpected issue. Motion by Mrs. Schwanebeck seconded by Mr. Gaulke to table this item until the next town board meeting. Motion carried.

When interviewed by the Lakeland Times immediately after the meeting, the town chair said that " 'Now we're looking at avenues to see what's a way that we can enforce it [boat ordinance].' " And, " 'Whether it be contracting with Vilas County, having a constable, hiring our own boat patrol... That's why I wanted the town attorney here to go through those things with us.' " (Lakeland Times, September 27, 2016, pages 5 & 33)

October 5. The [minutes](#) of the town board meeting held on October 5, 2016 include the following statement. Italics added.

Mr. Gaulke explained we had some resent violations of our boating ordinance particularly on Broken Bow Lake where the no wake restriction was being violated. Vilas County will not enforce our ordinances as we do not have a contract with them, and the Tribal Conservation Department cannot enforce our ordinances. The town contacted our town attorney Greg Harrold to see what options we would have for enforcing our ordinances. Attorney Harrold reported that we do have a citation ordinance which states the ordinances can be enforced by law enforcement officers. One option would be to hire a constable that would have to be a certified law enforcement officer which requires training and expense. They would have the option of enforcing all our ordinances. A boat patrol officer would only enforce boating violations. A constable is an elected position. Attorney Harrold reported in lieu of a constable, with board approval the Town Chairman can or appoint on his behalf an agent to issue citations which would be signed by the chairman. After brief discussion the board seeing that the volume of violations is so low a recommendation was made to revise our citation ordinance to include the chairman or his designee as enforcers. The forfeitures will also be revised. Attorney Harrold will try to get this revised by our October 19th Town Board meeting.

The audio recording of the meeting reveals that the town board is considering enabling the town chair to enforce boating, fireworks, and snowmobiling ordinances ([Audio Recording](#))

October 19, 2016. The agenda for the October 19, 2016 town board meeting includes the following item: "First Reading: Revised Citation Ordinance 95-O2D." Consideration of the item, however, was postponed until the town board meeting scheduled for November 2, 2016. ([Agenda](#), [Audio Recording](#))

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November 2, 2016. At the town board meeting held on November 2, 2016, the town board approved motions waiving the first reading of amendments to three existing ordinances in order to enable enforcement of ordinances. ([Agenda](#), [Audio Recording](#))

November 17, 2016. At a Special Town Board meeting held on November 17, 2016, the town board waived second readings and adopted the following: [Revised Citation 95-02D](#), Revised Ordinance Designating [Town Road Highways as Snowmobile Routes 94-02F](#), and [Revised Boating Ordinance 93-1C](#) ([Agenda](#), [Audio Recording](#)).

June 6, 2018. At its regular meeting on [June 6, 2018](#), the Lac du Flambeau Town Board met with Tribal Conservation Warden, Elliott Rising Sun, to discuss whether Tribal wardens would consider enforcing the town's boating ordinance. Officer Rising Sun indicated the wardens would be willing to work with the town ([Agenda](#), [Audio Recording](#), [Minutes](#)).

The minutes of the June 6, 2018 town board meeting include the following statement (italics added):

Elliott Rising Sun Chief Conservation Officer from the LDF Tribal Natural Resources Office is with us today. Mr. Gaulke talked with Elliott last week explaining that the town has ordinances primarily relating to boating, skiing, no wake, and no motor lakes. We have nobody except Mr. Gaulke to enforce them. Mr. Gaulke talked with Elliott asking if the Tribal Natural Resources Department would be interested in enforcing our ordinances for us. Elliott agreed to come to a Town Board meeting to talk to us about it. Elliott said they would be willing to work with the town. They have addressed several complaints recently regarding issues on Mitten Lake and To-To-Tom regarding nonmotorized lakes. Mr. Gaulke stated it is important to note the town ordinances pertain to residents and non-residents of the town. They do not regulate tribal members within the boundaries of the reservation. The town has ordinances and the tribe has their own set of ordinances. Elliott mentioned that the town stated they would have the town attorney look into some type of mutual aid agreement or memorandum of understanding. Mr. Gaulke will contact the town attorney and see the best route to take and stay within the state statutes. Elliott mentioned that the goal is to just make sure everyone is safe and not be hitting everyone with citations, but with a mutual aid agreement it would give them some authorization to enforce the town ordinances. Mr. Gaulke will work with our attorney and get some information back to Elliott to take to council and see how we can get an agreement to work together. This will be placed on a future agenda.

June 12, 2018. According to the June 12, 2018 edition of the Lakeland Times, *The town ordinances pertain to residents and non-residents of the town, not tribal members. The tribe has their own ordinances for tribal members within the bounds of the reservation. The wardens would be enforcing both the town's and tribe's ordinances. Before proceeding further, the town's attorney Greg Harrold and the tribal council need to be consulted regarding the type of partnership. The item will be put on a future agenda to be discussed in more detail.*

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