

Minutes of the Lake Hopatcong Commission

October 18, 2004

A meeting of the Lake Hopatcong Commission was held on October 18, 2004 at the Mount Arlington Municipal Building, 419 Howard Boulevard, Mt. Arlington, New Jersey. At 7:35 p.m., Acting Vice Chairman Grove called the meeting to order and stated that the meeting was being held in accordance with "Open Public Meetings Act."

Salute to the Flag: Acting Vice Chairman Grove and all those in attendance joined in a salute to the flag.

Roll Call:

Present: Elizabeth Gantert, Eric Grove^{*}, Richard Hodson, David Jarvis, Wayne McCabe, Robert Mitchko (Jefferson Alternate), Richard O'Connor (Mt. Arlington Alternate) and Richard Zoschak

Absent: Colleen DeStefano, Walter Kerner and Ken Klipstein (Vice Chair)*

Alternates Present: Frank Hughes (Morris County Alternate), Daniel McCarthy (Hopatcong Alternate -8:10 p.m.), Brandon Phillips (Roxbury Alternate)

With eight members present at Roll Call, Acting Vice Chairman Grove declared a quorum.

Also present were: Fred Lubnow - Princeton Hydro
Helene Chudzik – Legal Counsel

Communications

Acting Vice Chairman Grove asked for any comments or questions regarding the Communications List. In response to Mr. Zoschak's inquiry regarding the notice of violation in Jefferson Township, Mr. Phillips responded that earlier in the summer the State Police caught someone putting in a wall and filling in the lake without any permits. Mr. Clark stated that Jefferson told the resident they did not need permits. In response to Mr. Hodson's inquiry regarding the site plan review for 141 Mt. Arlington Blvd., Mr. Phillips responded that a site plan from Roxbury for a variance for an addition on a house was denied due to over impervious coverage already. The resident revised the plans to

* Per memo on file, Eric Grove named as Acting Vice Chair in absence of Ken Klipstein for 10/18/04 .

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decrease the impervious surface on the site and came to the Commission to ask for our approval of the revised plan prior to going back to Roxbury. Mr. Phillips stated that when completing reviews he responds that the Commission has no objection to plans, but does not advocate development of any kind except for the Jefferson project to install the vortex unit which was specially related to water quality.

Treasurer's Report/Payment of Bills

Acting Vice Chairman Grove provided the treasurer's report. He reported that for the period ending September 30, 2004 the checking account register balance was \$14,579.32 The JP Morgan account had a ending balance of \$353,708.54 for a total balance in the JP Morgan and Bank of New York accounts of \$368,287.86.

The Revised Bill List for \$18,740.28 was presented for approval. Mr. Zoschak made a motion to approve the Revised Bill List. Mr. McCabe seconded the motion. [A copy of the Revised Bill List is available on file.]

ROLL CALL:

Gantert	Yes	Zoschak	Yes
Hodson	Yes	Mitchko	Yes
Jarvis	Yes	O'Connor	Yes
McCabe	Yes	Grove	Abstained

Motion carried 7 to 1 (one abstention).

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Mr. Phillips requested that on page 3 of 8 under Field Staff Report, dumb truck be changed to dump truck. Mr. Zoschak made a motion to move the September 20, 2004 minutes as amended. Ms. Gantert seconded the motion. Acting Vice Chairman Grove asked for any further comments or questions regarding the meeting minutes. There being no further comment, the Acting Vice Chairman requested roll call.

ROLL CALL:

Gantert	Yes	Zoschak	Yes
Hodson	Yes	Mitchko	Abstained
Jarvis	Abstained	O'Connor	Yes
McCabe	Abstained	Grove	Abstained

Motion did not carry 4 to 4 (four abstentions). Approval of the minutes will be considered at the next meeting.

Counsel Chudzik clarified that abstentions do not count toward approval and six votes are needed to approve. She stated that it is a ministerial act and has advised in the past to rely on the representation of your colleagues to say the minutes are a true and accurate representation.

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Public Comment

At this time, Acting Vice Chairman Grove opened the meeting for public comment.

Pat Rector introduced Gabriella Rector and Kelly Bond of Girl Scout Troop #997 in Hopatcong to make a presentation to the Commission. Gabriella Rector, on behalf of the troop, presented a poster on aquatic plant life in Lake Hopatcong to further educational purposes. She also thanked Ms. Macalle-Holly, Mr. Clark and Princeton Hydro for their assistance. Kelly Bond explained the poster and stated they will present an educational CD for schools in the area in a few months. Acting Vice Chairman Grove and the other Commissioners thanked the scouts for their contributions and applauded their efforts.

There being no further public comment, Acting Vice Chairman Grove moved to the next item on the agenda.

Old Business

Field Staff Report

Mr. Clark reviewed his October 18, 2004 Field Staff Report with the Commissioners. [A copy of the field staff report is available on file.] Mr. Clark responded to an inquiry explaining that a handheld GPS unit was used to conduct the buoy survey instead of a Trimble unit because the Commission does not have the appropriate software for the Trimble unit. Mr. Zoschak suggested that the Commission consider a shared services agreement with the municipalities or county to buy a GPS system since the towns will need this to implement the stormwater rules. Mr. Clark stated that besides buying the unit, the appropriate software is also necessary. Mr. Hodson stated that Hopatcong has a Trimble unit and may be able to work something out with the Commission and also Sussex County has several units available. Mr. Clark explained that when the Commission did the outflow survey using Sussex County's Trimble unit, Dave Kunz setup the unit for the survey, but the staff could not download the data since the Commission did not have the appropriate software on their computers. Acting Vice Chairman Grove offered to check with Dave Kunz about the Tremble data from the outflow survey being downloaded and available to the Commission's staff.

Stormwater Regulations

Ms. Macalle-Holly stated that at last month's meeting Vice Chairman Klipstein had asked each municipal and county representative to provide a status of what was being done to comply with the stormwater regulations. Ms. Macalle-Holly suggested that in the Chairman's absence, the agenda item should be postponed until the Vice Chairman returns. Mr. Zoschak reported that Roxbury is in the process of working with Morris County on some model ordinances. In response to an inquiry, Ms. Macalle-Holly responded that the Vice Chairman did not specify if he wanted a written report. Mr. Hodson stated that there were model ordinances available on the DEP website.

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FY05 Budget

Acting Vice Chairman Grove outlined that Commissions' actions regarding the budget indicating that the Commission has received \$300K so far this fiscal year and is waiting for the other \$600K. Mr. Zoschak stated he was in Trenton today. He reported that the JBOC Committee met and the Commission was discussed although he was unsure of the final outcome.

In response to an inquiry, Ms. Macalle-Holly reported that she finished the last class on the website design and she has been trying to contact John Driscoll to clarify a few items. She indicated that after taking the classes, she realized much more planning and design needs to be done on the website which was not done by the Public Relations committee. She was unable to provide a timeline of when the site would be up and running.

Princeton Hydro Report

Dr. Lubnow reported on the following:

Drawdown for Aquatic Plant Control – Since the report was just distributed, it was suggested that the Commissioners review the report to discuss at the next meeting.

Total Maximum Daily Load (TMDL) Project - The project is wrapping up and still working on the build-out analysis. PH anticipates submitting the TMDL first draft for review by the end of October or early November.

FY05 319(h) Grant – PH will be addressing the next set of technical questions issued by DEP and will provide a copy of the responses to the Commissioners.

Other Grants – In response to a request to look into funding through transportation grants, there are environmental mitigation grants to address water pollution due to highway runoff. The limitation with this grant is that the roads have to be State road, but all grant funding would go towards implementation. All municipalities should be receiving requests for proposals for this grant program this winter. Dr. Lubnow will contact the DOT regional and state offices to make sure that they know the municipalities around Lake Hopatcong are interested in this and to confirm that these grant funds are for state roads only.

He also spoke with the Army Corp about potential funds that could be used to continue with the update of Lake Hopatcong's Phase 1 study. The Army Corp restoration funds have been slashed because money is going overseas. Dr. Lubnow will continue to contact individuals at the Army Corp Restoration Division to inquire about a possible joint venture to do some projects such as an updated fishery survey and bathymetric survey.

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Ms. Macalle-Holly stated that the two letters from Dr. Lubnow regarding his recommendations for possible projects for the Commission to consider as part of their FY06 budget were included with the communications.

Dr. Lubnow stated he is contacting DEP to inquire how to get the Commission Operation Staff certified to collect stormwater samples. This is important because it would enable the staff to collect samples to monitor reductions in pollutant load to comply with the TMDL. Dr. Lubnow emphasized that by complying with the TMDL, the Commission may be eligible to receive additional grant funds.

Ms. Macalle-Holly stated that a component of the FY05 319(h) grant is for certification for stormwater sampling. This is being considered as an FY06 project if the Commission does not receive the 319(h) grant funding.

In response to Mr. Hodson's inquiry, Dr. Lubnow stated he will be sending another copy of the TMDL to the municipalities to remind them that they can use the TMDL study to comply with the municipal stormwater plans and it should be incorporated within their stormwater plan as a lake community.

New Business

FY06 Budget – Acting Vice Chairman Grove gave an overview of the Commission's budget history. He stated that based on verbal commitments the Commission received for FY05 funding, the Budget Sub-Committee met with Ms. Macalle-Holly and Mr. Clark to prepare the FY06 budget request. The Budget Sub-Committee finalized the first draft of the FY06 budget request which was distributed in the meeting package for the consideration. Acting Vice Chairman Grove stated that the budget has to be submitted by October 31 and the only other alternative if the budget is not passed, would be to have a special meeting on October 29. He also stated that when he learned that the Vice Chairman could not be in attendance today, the Vice Chairman also advised staff of an email regarding the Commission's FY06 budget request.

Ms. Macalle-Holly reported that when Vice Chairman Klipstein was inquiring with Dave Barth and Irene Kropp about when and how the Commission should submit its budget, the response was that it should be submitted as was done in the past with the budget submitted to OMB and a copy to DEP. In response, Irene Kropp responded that state-wide, they were looking for a 10% decrease in budget requests for FY06. According to Ms. Macalle-Holly, Vice Chairman Klipstein interpreted that to mean a 10% reduction from the \$900K DEP is funding the Commission for FY05 which would be \$810K for the FY06 budget submission.

The FY06 budget request prepared by the budget sub-committee for the Commissioners' consideration is \$1,027,259. There was lengthy discussion on how the budget request was arrived at, specific questions about budget lines and how to possibly reduce the budget request.

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Ms. Macalle-Holly also pointed out that funding for the maintenance facility was not included in the proposed FY06 budget request. She reported that at the budget sub-committee meeting it was discussed and at that time, Vice Chairman Klipstein suggested and it was generally agreed to at the sub-committee meeting, that the Commission should have a meeting with the State Park to discuss submitting a separate capital budget request for a maintenance facility, although she was unsure if this would move forward in light of the 10% budget decrease mandate. Acting Vice Chairman Grove explained that the budget sub-committee spent a half day meeting with staff to discuss the budget issues as what to include and not include such as the Executive Director and the current vacant staff position and other issues such as dental benefits, employer pension contributions, and salary increase since the staff 2% increase in 2005 is being offset by a 2% increase in employee pension contribution.

Ms. Macalle-Holly also reported on the insurance issue which she discussed with Vice Chairman Klipstein earlier today. He continues to pursue the insurance issue with the State to see if we can get insurance through the State, but at this point, insurance needs to be budgeted for.

In response to an inquiry about the recommended raise for staff, Ms. Macalle-Holly stated the sub-committee agreed to continue to issue staff's raise in January. For January 2006, the recommended raise was 3.5%. She stated that the sub-committee charged her with reviewing the raises issued by the CWA for 2006 and their increase was 4.25% split between January and July. She also indicated that since the State is offering dental benefits to local agencies, the Commission FY06 budget includes dental benefits for employees at the State rate.

Ms. Macalle-Holly reviewed the possible budget cuts suggested earlier in the day by Vice Chairman Klipstein which include eliminate executive director position, not backfilling one vacancy for field staff, eliminate PH project for stormwater and stream monitoring which may get the Commission budget to \$810K.

After considerable discussion of alternates, number crunching scenarios and clarification on budget lines, Mr. McCabe made a motion to approve the budget with the two employee changes previously discussed: (1) eliminate the Executive Director position and (2) not fill the current vacant field staff position. Mr. Hodson seconded the motion. Mr. Hodson stated if the Commission receives their funding request, it may be necessary to move some funds around to hire a seasonal employee. Acting Vice Chairman Grove stated the budget would be modified to remove the two employee salaries as well as any elements of other budget lines associated with the position such as training to amend the budget.

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ROLL CALL:

Gantert	Yes	Zoschak	Yes
Hodson	Yes	Mitchko	Yes
Jarvis	Yes	O'Connor	Yes
McCabe	Yes	Grove	Yes

Motion carried 8 to 0.

Mr. Hodson suggested that when the budget is submitted a request be made to establish a current source of funding for the Commission since no one is coming up with a solution to the Commission's funding issue.

By-Laws – Acting Vice Chairman Grove stated the section of the by-laws to be reviewed as well as a position statement from Counsel had been distributed. Mr. Hodson discussed keeping the law creating the Commission within the by-laws because for the average person they would not know what the Commission's directive is. There was also some discussion on when to have the annual reorganization meeting. Mr. Hodson stated that since the by-law review document arrived only a few days before tonight's meeting, perhaps everyone did not have enough time to review Counsel's recommendations against the by-laws. Acting Vice Chairman Grove suggested that the Commissioners review the by-laws against the memorandum from Counsel Chudzik and provide comment through 2.5 to Mr. Hodson within the next two weeks.

In response to Mr. Hodson's inquiry on 1.5(g) (2), Counsel Chudzik suggested using "delivered" because case law is keeping pace with technology. In response to Mr. Zoschak's inquiry about including the language from the "Act" within the by-law, Counsel Chudzik stated her concern is if the Commission does this and the law changes but the Commission does not change their by-laws, the Commission could be in violation. She referred to her memo which recommends that if this approach is used appropriate language needs to be incorporated so the Commission is not in violation of its by-laws or the law. Mr. Zoschak stated that by not referencing the Law, it would save a lot of paper and doesn't need to be included in the by-laws. Mr. Hodson stated that the public would be more aware of what the Commission is charged with if the law is included in the by-laws. Counsel Chudzik stated that there is language that is used routinely for incorporation by references in future legislative changes.

Counsel Chudzik provided clarification on using a staff person as secretary. She indicated that many organizations do use a senior or confidential staff person as long as they are largely doing ministerial duties. In response to Mr. Zoschak inquiry, Counsel Chudzik agreed that Ms. Macalle-Holly could be named secretary.

Counsel Chudzik advised that in Section 1.17(b) discussing self-dealing, the Commission should refer questions to the Executive Commission on Ethical Standards for review. She also suggested for Section 2.21(d) it is unduly restrictive to have a super majority for an emergency meeting. A super majority is one more than needed to approve the Commission's budget. Counsel Chudzik stated that if the Commission is confronted with

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a true emergency, the Chairman should have the right to call an emergency meeting and she would not recommend having this super majority requirement in the by-laws.

Mr. Hodson stated that at some point in the future, the issue of who receives copies of the meeting minutes needs to be resolved. Mr. Hodson agreed to e-mail again the entire by-law document. He also suggested that the committee structure in 2.14 needs to be addressed and where alternates and volunteers fit within the committee structure. Counsel Chudzik stated that volunteers can be on committees, but the Commission cannot indemnify them. He will distribute the by-laws with references to the executive director, but will include a notation "if appointed."

Public Comment

At this time, Acting Vice Chairman Grove opened the meeting for public comment.

Mr. Kurzman asked for clarification on submitting the budget. Acting Vice Chairman Grove responded that the Commission would submit a budget for \$843K-\$845K based upon finalization of numbers and would submit it on time. He stated that he read the document regarding his recommendation of flushing the Lake. An element that was not addressed in the document was the flushing affect. Dr. Lubnow responded that the request was to prepare a report on the effects of drawdown for weed control. Dr. Lubnow further explained that based on limnological literature, flushing for a water body the size of Lake Hopatcong will not have the eco-system wide effect needed and would not be feasible technique. Mr. Kurzman also discussed the statement in the report suggesting to look at the quality of the water over the years to make a decision. He stated PH has been collecting the water quality data for years and hopes that this data is already available. Dr. Lubnow stated that if the Commission is seriously considering drawdown as a long-term management technique, the data needs to be collected to support this management plan. PH has been collecting quality data, not quantitative data. To document how effective a drawdown is, quantitative data needs to be collected.

Mr. McCarthy, Hopatcong Alternate Commissioner, discussed the budget process relative to what the Commission should be doing and what the Commission has money to do. He suggested that a frustration statement which captures the sentiment of tonight's meeting be submitted along with the budget request to let Trenton Acting Vice Chairman Grove concur that the level of frustration is getting greater.

There being no public comment, the Acting Vice Chairman indicated that the next item on the agenda is the Executive Session. After Ms. Macalle-Holly read the resolution to adjourn to Executive Session, Mr. Zoschak made the motion to adjourn and Mr. McCabe seconded the motion. All those in favor signify by saying "aye" and those opposed by saying "no." There being a unanimous "aye" the motion was carried. The meeting adjourned to Executive Session at 9:45. [Resolution 04-05 is available on file.]

Submitted by: Donna Macalle-Holly