

# Minutes of the Lake Hopatcong Commission

## May 16, 2005

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A meeting of the Lake Hopatcong Commission was held on May 16, 2005 at the Jefferson Municipal Building, Weldon Road, Lake Hopatcong, New Jersey. At 7:35 p.m., Chairman Ondish called the meeting to order.

**Salute to the Flag:** Chairman Ondish and all those in attendance joined in a salute to the flag.

### **Roll Call:**

Present: Colleen DeStefano, Elizabeth Gantert, Walter Kerner, Kenneth Klipstein, Wayne McCabe, Herman Volk, Richard Zoschak, Frank Hughes (Morris County), Daniel McCarthy (Hopatcong), John Risko (Sussex County) and Arthur Ondish

Absent: Eric Grove, Richard Hodson, Dave Jarvis

Alternates Present: Robert Mitchko (Jefferson), Richard O'Connor (Mount Arlington), Brandon Phillips (Roxbury), Patricia Rector (DEP Alternate)

With eleven members present at Roll Call, Chairman Ondish declared a quorum.

It was reported that Mr. Hodson had a meeting for the school board budget and Mr. Jarvis had a work obligation.

Also present were: Steve Souza - Princeton Hydro  
Lewin Weyl – Alternate Commission Legal Counsel

### **Communications**

Chairman Ondish asked for any questions or comments on the communications. Mr. McCarthy referred to Mr. Clancy's email stating he had several good points, but as far as the Commission's role, Mr. McCarthy suggests that the Commission continue to communicate with Fish and Wildlife (F&W) on a regular basis other than when there is a hot issue. Chairman Ondish suggested that the Knee Deep Club consult with F&W directly on the issue to increase the size of the trout stocked. Mr. Klipstein offered to coordinate at any time with F&W. Chairman Ondish suggested that Mr. Klipstein contact F&W to inquire if anything is happening with Lake Hopatcong and to ensure F&W contacts the Commission.

Mr. Kerner had questions regarding the letter from the State about lake dredging. It was discussed and determined that the Commission cannot apply since it was a loan. It was

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suggested that the Commission inform the associations around the Lake about the loans and include this information on the website. Mr. Phillips suggested that the Commission could assist with the applications. Ms. Macalle-Holly offered to check on the distribution within the Lake Hopatcong region. Dr. Souza stated that COLA has also provided this information to lakes.

Chairman Ondish thanked Mr. Phillips for completing the site plan reviews. He stated that submission of the site plans from Mount Arlington to the Commission had slipped through because sending a copy to the Commission was taken out of their application process. He stated that this is being adjusted and the Commission will start seeing site plans from Mount Arlington.

### **Treasurer's Report/Payment of Bills**

Chairman Ondish asked for any questions on the Bill List. Mr. Zoschak asked if the projector was a budgeted item. Ms. Macalle-Holly stated that when staff met with the budget sub-committee the last time the budget was reviewed, the sub-committee agreed to move forward with the purchase of the projector. Chairman Ondish stated that this is part of the community outreach. Ms. Macalle-Holly stated it was in the budget for two years. Mr. Zoschak made a motion to move the Revised Bill List. Ms. Gantert seconded the motion. All those in favor signified by saying "aye" and those opposed by saying "no." There being a unanimous "aye" the motion was carried.

In Mr. Grove's absence, Ms. Macalle-Holly stated that the Reconciliation Summary was distributed for review. She stated, as of April 30, 2005 the Valley National Bank (VNB) was included in the report. The VNB beginning balance was \$325,000 and a register balance of \$317,027.15. The Bank of New York checking account had a cleared balance of \$25,000 and a register balance of \$24,960 and the JP Morgan Money Market had a beginning balance of \$17,371.97 and a register balance of \$49,930.09 for a total balance in the three accounts of \$391,891.26. Ms. Macalle-Holly stated that once the electronic fund transfers to pension and other utilities are transferred to VNB, the BNY and JPM accounts would be closed.

Mr. Zoschak made a motion to accept the financial report and Mr. Kerner seconded. All those in favor signified by saying "aye" and those opposed by saying "no." There being a unanimous "aye" the motion was carried.

### **Minutes of Meeting of April 18, 2005**

Chairman Ondish asked for any comments or questions regarding the April 18, 2005 meeting minutes. Mr. Hughes stated the minutes indicated the New Jersey Press Society website was free, but there is actually a minimal charge of approximately \$65 for use of the site. Ms. Macalle-Holly responded that the statement was made, but she would make an appropriate notation in this month's meeting minutes. [Page 4 of 10] Mr. McCarthy made a motion to move the March minutes. Mr. Zoschak seconded the motion. All those

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in favor signified by saying “aye” and those opposed by saying “no.” The motion carried with three abstentions.

### **Public Comment**

At this time, Chairman Ondish opened the meeting for public comment.

Brandon Phillips, Roxbury Alternate Commissioner, stated that he received notice from DEP that they are now accepting 2005 Environmental Excellence Awards applications. He stated the Commission should apply for the third year in a row.

Pat Rector, DEP, stated that DEP started a volunteer monitoring program a few years ago. She discussed the various levels of monitoring up to including data that would be collected and accepted by DEP. Danielle Donkersloot, who is responsible for the stream monitoring, will now start a lake volunteer monitoring program. Lake Shawnee was one of the 40 random lakes selected for monitoring of which two lakes would be selected to begin monitoring this year. Ms. Rector suggested that the Commission might have some interest in seeing that Lake Shawnee is selected. The program is a volunteer effort and training and monitoring kits will be provided. Since Lake Shawnee is private, access is needed. This pilot monitoring project will take place for over the next several years to provide long-term trend analysis data. Ms. Rector suggested that if there was any interest, she should be contacted.

Dr. Souza stated that PH would be working with Ms. Donkersloot to develop the volunteer monitoring program. Dr. Souza stated that he could suggest to DEP that Lake Shawnee be monitored if that is the desire of the Commission.

Mr. Klipstein stated that EPA looked at the statewide monitoring network and identified a gap in DEP’s lake monitoring. This piece of the monitoring is the long-term trend analysis. Out of 200 lakes, 40 were selected to have volunteer monitoring done every year for a five-year period. Lake Shawnee was one of the 40 selected statewide for volunteer monitoring trend analysis.

Ms. DeStefano questioned how frequently the monitoring would be conducted. If monitoring is not done frequently enough, then the data can be skewed and she did not want any further hardship to be put on the Township. Dr. Souza stated that a defined QAPP is being developed. Ms. DeStefano offered to approach Jefferson’s Environmental Commission. Mr. Klipstein stated that they would provide an overview of this and if Jefferson could identify some volunteers, it would be helpful. Dr. Souza stated a good coordinator is needed to take charge of the volunteers. A dedicated group that can conduct the sampling at the same time and same place, will eliminate as much potential error as possible.

Tim Clancy, Jefferson resident, questioned if his letter about the trout size was discussed. Mr. McCarthy recapped his previous comments. Mr. Clancy stated that the Knee Deep

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Club (KDC) is asking F&W to increase the size of the trout to 11" plus. He stated that the Club has changed its stockings to enable fish to holdover. Chairman Ondish stated that the KDC should approach F&W on this issue and in turn, F&W should discuss the issue with the Commission prior to making a decision. He also stated that the KDC should copy the Commission on anything sent to F&W.

Mr. Clancy urged the Commission to have alternates participate in Executive Session as per other state agencies.

There being no further public comment, the Chair moved to the next agenda item.

### **Old Business**

#### **Chairman's Report**

The Chairman stated he sent a letter to the Acting Governor. Both his letter and the Acting Governor's response were included in the meeting package. Chairman Ondish reported that Senator Bucco went before the Senate and questioned Commissioner Campbell about why the Commission is not a line item in the DEP budget. The Chairman stated that the Commission is closer than it ever has been to becoming a line item and he is hopeful that there will be a positive response. In response to Mr. Klipstein's inquiry, it was reported that there were no changes made to the recent copy of the budget sent to Senator Bucco's office.

Chairman Ondish reported that Picatinny was spared from the potential base closing announced this week. He stated that the lake fertilizer campaign is going strong and thanked everyone again. He stated that Mount Arlington posted the fertilizer message on their signs over the weekend.

### **Old Business**

#### **Field Staff Report**

Chairman Ondish stated that the Field Staff report is included in the package. He asked if anyone had any questions for the Field Staff Director. In response to Mr. Zoschak's inquiry, Mr. Clark stated that he is working to getting the badges renewed at Picatinny since they have expired. He said there is a combination of things that have attributed to not starting harvesting. He said they have not seen any weed growth since the water is so cold and so high. He did not see the need to rush bring the equipment over to harvest all day for a half load of weeds. Instead, the staff continued to work on the shared services agreement, which he thought, would be more beneficial.

In response to Mr. Kerner's inquiry, Chairman Ondish reported that at this time Mount Arlington does not have the work setup to begin the stormwater projects at this time. He said Mount Arlington shared services with the Commission may begin in the fall.

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Chairman Ondish discussed the Commission's participation in the Mount Arlington parade. Mr. Clark stated he believed Mount Arlington wanted a harvester in the parade. To tow a harvester, a CDL license is needed. Mr. Clark stated that the staff members are not available to participate in the parade and he did not have a CDL license.

### USGS Monitoring Gage

Chairman Ondish reported that a letter was sent to the Musconetcong Sewage Authority (MSA) to ask if they can contribute to the monitoring gage. He stated he received positive feedback, but nothing definite yet. Chairman Ondish stated the monitoring gage is not the Commission's sole responsibility especially since the Commission is not a line item in the State's budget yet. He suggested that the Commission wait until the MSA respond to their request before making a decision on the gage. In response to Mr. McCarthy's inquiry, Chairman Ondish stated he did not speak with the State Boating Regulation Commission.

Ms. Macalle-Holly stated that the current contract with USGS only runs through September 30, 2005. USGS has kept the gage up and running without any commitment from the Commission to continue the service. She stated that USGS sent the contract renewal to the Commission during the transition of the Chairman so it has been a pending issue since.

In response to an inquiry regarding the Commission having a contractor install a gage, Mr. Klipstein stated he had sent an email advising that the USGS employee that had proposed this was new a technician and this was not possible. In order for the gage to be properly maintained, USGS can only offer the current service provided.

Dr. Souza initiated a discussion on how the Commission wants to use the USGS lake level data. If it is to monitor lake level to indicate no-wake conditions, a simple staff gage can accomplish that. The real-time data provides the Commission and DEP with the ability to understand flow and other hydrodynamic conditions that exist within the Lake. There are varieties of applications the data can be used for such as providing further insight on fish habitat.

Ms. DeStefano stated she would hate to see the Commission go backwards and prefer to see the data integrated into other use. Mr. Klipstein stated there is a lot of interest in the gage and USGS has received letters expressing the public's interest in continuing with the gage. There was discussion on how residents and others use the gage. Ms. DeStefano stated her interest in continuing with the gage had more to do with the effects of rainfall and other hydrodynamic issues.

Mr. Klipstein stated that DEP's contribution is FY05 money that will be gone. Mr. Klipstein stated he is not comfortable holding off USGS any longer than possible. He stated the Commission should use the data to its full potential. He believes it has \$10K worth of value if the data is used properly.

Mr. McCabe stated that it is a matter of real-time data versus someone at the staff gage doing the actual monitoring. If you are looking at a monetary expenditure for a high tech piece of equipment, will the Commission use it to the maximum capacity given the Commission's budget? Mr. Risko stated that other federal agencies would be interested in the lake level in light of the recent flooding in the area. He suggested that the Commission reach out to other federal agencies. Mr. McCarthy suggested doing a mass mailing to agencies as to why funding the gage is in their best interest.

Chairman Ondish stated that he is not against the gage at all and thinks it is beneficial for monitoring the lake, but he is against having to spend that kind of money when the Commission does not have a solid budget yet. Ms. DeStefano stated that the Commission should not dismantle projects that are at the core of what the Commission does. Dr. Souza stated it is critical for the Commission to identify how the Commission can best use the USGS data. He stated that PH made use of the USGS data when developing the TMDL. Dr. Souza stated that PH could provide the Commission with a list of how to make continuing use of the data. Ms. DeStefano stated she would like to see such a list. She compared this discussion to one the Commission had when the Commissioners were considering going forward with the TMDL. At that time, it was explained that the purpose of the TMDL was a way for the Commission to obtain money and it was part of the Commission's responsibility.

Chairman Ondish stated that he went to the MSA because he believes there is a good shot that the MSA will pay some or possibly all of the \$10K. He is in agreement with sending letters out to other agencies next year when the Commission has time to do that. Mr. Ondish stated that a letter should be sent to USGS advising them that the Commission will get back to them by the end of June. Mr. Zoschak suggested also contacting the Jersey City Reservoir. Chairman Ondish stated that all the suggestions put forth were good ones, but suggested that a letter to USGS be sent and PH provides a list of how the data could be used. The Chair directed Ms. Macalle-Holly to include this as an agenda item under Old Business for the next meeting.

### **Princeton Hydro Report**

Dr. Souza reported that the 319(h) grant was awarded to the Commission. Once the Commission received the contract from DEP, PH would want to initiate a kickoff meeting to get the project rolling. Participants from Jefferson and Hopatcong would be asked to attend.

He stated for the FY06 319(h) grant, Dr. Souza stated that the Commission has a meeting scheduled for May 20 with DEP. Dr. Lubnow will attend, but a representative from the Commission has to attend since it cannot be conducted only by a consultant for the applicant. Chairman Ondish asked if anyone on the Commission had the time to attend. Dr. Souza stated the meeting would be approximately one hour in Trenton to promote the application to DEP. Since no Commissioners were available, the Chair asked Ms. Macalle-Holly to attend on behalf of the Commission.

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Dr. Souza discussed the EPA Targeted Watershed grant application. The application was prepared and forwarded to Ken Klipstein to seek the Governor's nomination. The majority of funds requested in the grant were for stormwater BMP projects in Jefferson, Mount Arlington and Roxbury. The grant proposal also includes an innovative alternate septic design for a day care facility in Jefferson as well as additional training for staff to collect water quality data and public education and outreach. Ms. Macalle-Holly acknowledged the outstanding efforts of Pat Rector to get the grant proposal ready in a very short time frame. Mr. Klipstein stated that the DEP Commissioner recommended the LHC grant application for nomination to the Governor and it is the only in-state proposal that is being recommended. Dr. Souza stated that the grant would have competition from other submissions within EPA Region II, which includes New York and Puerto Rico. Ms. Macalle-Holly stated that Jefferson, Roxbury and Mount Arlington were all very responsive in providing the commitment letters, which are a critical component for the grant application.

Dr. Souza stated that Dr. Lubnow would provide Ms. Macalle-Holly another document on the lake-friendly fertilizer. He also stated he was so impressed with how the Commission organized this effort so quickly that he presented this outreach information to the Deal Lake Commission.

Dr. Souza stated that Princeton Hydro would initiate the lake monitoring on May 17. He stated PH could do the in-situ monitoring at whatever stations requested, but additional chemical samplings would require more laboratory fees.

Dr. Souza reported on the TMDL study indicating that comments were received from DEP, which are being integrated into the final report.

He also stated that the EPA Wetlands project is moving along very well. The grant quarterly report submitted by Princeton Hydro to the EPA was included in the communications package. He would also extend an invitation to Mr. Phillips when PH begins the wetland field visits. PH is also looking at fish habitats associated within the wetlands and riparian areas. PH will give a presentation at one of the Commission meetings on the project.

Chairman Ondish thanked Dr. Souza for the letter he provided on sewerage the portion of Mount Arlington that is in the Highlands Preservation area. He reported that Mount Arlington sent the paperwork to the Highlands Commission last week to seek an exemption in the preservation area to install the sewer line.

Dr. Souza stated he has been researching the historical use of pesticides, herbicides or algaecides in the Lake and he could not find any information on large-scale applications in the Lake. He reviewed LHRPB reports from the mid-1970s and everything he reviewed so far indicates that spot treatment, similar to those today, were done, but no large-scale applications.

**New Business**

Code of Ethics

Chairman Ondish stated the Code of Ethics was included in the meeting package. Mr. Zoschak asked for a correction to be made in Section 7. C. 2. to change “unites” to “minutes.” In response to Mr. Zoschak’s inquiry, Chairman Ondish responded that once the Commission adopts the Code of Ethics, they would need to sign a disclosure form. Chairman Ondish questioned if the Chairman and Alternates should be listed in the definitions. Counsel Weyl stated the Chair is considered a Commissioner and to the extent that an Alternate serves, they would be subject to it. Mr. McCarthy questioned if he would be prohibited from assisting clients for matters related to the Lake discussed in Section III.A. Counsel Weyl stated that it would preclude. Mr. Phillips stated that this would affect him also because he could not do a permit application for anyone on the Lake. Mr. McCabe stated that as a professional planner he represents municipalities so it would affect him. Counsel Weyl stated this is a form approved by the Executive Commission on Ethical Standards. If the Commission recommends approval of it, it is forwarded to the Commission’s Counsel, Al Ramy. In all likelihood, the form would be approved, although the Commission is not essential to follow it. Counsel Weyl also stated that the Commission would also be appointing an Ethics Officer who would be responsible for forwarding questions and inquiries. After additional discussion, the Chairman requested that Commissioners forward any questions and concerns to Ms. Macalle-Holly. She will compile a list and forward to Counsel Chudzik for her response. This will be discussed again at next month’s meeting.

Equal Opportunity and Affirmative Action Policy Statement

Chairman Ondish asked the Commissioners if they had an opportunity to review it. He stated this was a standard policy. Counsel Weyl stated that this is a State policy whether the Commission adopts it or not.

Mr. Zoschak made a motion to adopt the Equal Opportunity and Affirmative Action Policy Statement. Mr. McCabe seconded the motion. There being no discussion, the Chair requested a roll call vote.

**ROLL CALL:**

DeStefano	Yes	Zoschak	Yes
Ganert	Yes	Hughes	Yes
Kerner	Yes	McCarthy	Yes
Klipstein	Yes	Risko	Yes
McCabe	Yes	Ondish	Yes
Volk	Yes		

Motion carried 11 to 0.

Counsel Weyl asked if the Commission would appoint an Affirmative Action Officer. Mr. Zoschak stated that he previously volunteered to be the Ethics Officers so he would

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also volunteer for this. Mr. McCabe made a motion to nominate Richard Zoschak for Affirmative Action Officer. Mr. Risko seconded the motion. All those in favor signified by saying “aye” and those opposed by saying “no.” There being a unanimous “aye” the motion was carried.

Mr. Zoschak asked that before the Commission discussed whether to adjourn to Executive Session, the Executive Session Minutes from May 16 should be approved. Mr. Zoschak made a motion to move the Executive Session Minutes of May 16, 2005. Mr. Kerner seconded the motion. There being no further discussion, the Chair requested a roll call vote.

### **ROLL CALL:**

DeStefano	Yes	Zoschak	Yes
Ganert	Yes	Hughes	Abstained
Kerner	Yes	McCarthy	Abstained
Klipstein	Yes	Risko	Yes
McCabe	Abstained	Ondish	Yes
Volk	Abstained		

Motion carried 7 to 4 (four abstentions).

### **Public Comment**

Chairman Ondish opened the meeting for the second round of public comment.

Tim Clancy, resident of Jefferson, questioned if Agenda Item C. of New Business would go into Executive Session to be discussed. The Chairman stated there is a letter that is attorney-client privilege so it has to stay confidential. Mr. Weyl stated the letter could be made public when the Commission feels it no longer jeopardizes the privilege or the issue to be discussed. Counsel Weyl urged the Commission not to release the letter and to have a general discussion on whether alternates ought to be part of executive session. The open discussion could be done privately or publicly.

Mr. Clancy stated he would like to know each Commissioner’s opinion on the important issue.

### **Alternate Commissioners in Executive Session**

Mr. Weyl reviewed the DAG office’s position to include Alternates in Executive Session. He stated Executive Session is generally a privilege that public bodies hold dear and to the extent that more people participate in Executive Session, there is a greater possibility of disclosures. Once something that has been discussed in Executive Session is disclosed, the privilege is lost. If someone is not qualified for an Executive Session and is not needed to participate, the privilege may be lost entirely to that subject matter. Counsel Weyl cited Statue 58:4B-3B. He stated that the statement “...while so acting an alternate member shall have all the powers, including voting powers, of the regular members.” For this reason, Counsel recommends that the Commission does not open

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Executive Session to Alternates unless they are serving as a regular member. There was discussion on how an Alternate can vote on an issue if they were not involved in a previous Executive Session when the issue had been discussed. Counsel Weyl stated that participation is kept narrow for the protection of the Commission.

Mr. Kerner stated he requested that this topic be put forth as an agenda item and discussed his reasons for this. Mr. Kerner stated that although he understands Counsel's position, he believes the Commission has the right to allow Alternates to sit in on Executive Session.

Counsel Weyl clarified further. He stated that if something were privileged there would not be any depositions on the meeting. If someone who is not privileged attends, the Commission's adversary may claim that the entire privilege is lost on that subject and everyone who was not subject to deposition previously may now be subject to depositions and interrogatories.

Chairman Ondish stated when he became Chairman, he wanted to have the Alternates involved in Executive Session, but after discussion with Legal Counsel, he understands what the law is trying to protect.

Counsel Weyl stated the Commission's legislation is crafted a certain way and the implication is if not sitting as the regular member, then you are not a Commissioner at that point for purposes of voting and all privileges and protections.

Chairman Ondish stated he hoped the general discussion was educational for the Alternate Commissioners present. Mr. McCarthy stated he still has issues with this and feels that if the Commission wants to include Alternates it can. Mr. McCarthy discussed how the role of the Alternates has changed and that they are more involved in the Commission now.

Counsel Weyl stated he reviewed this issue with Counsel Chudzik earlier today and the issue went above Counsel Chudzik to higher levels to ensure it was the DAG's office best advice possible. Counsel Weyl stated that Commissioners might have to spend more time to ensure that an Alternate understands everything on an issue that is carrying over to another meeting and this should be the process. However, it is the DAG's strong recommendation to preserve the privilege for the sake of the Commission and the other Commissioners.

Chairman Ondish questioned what more needed to be discussed on the issue. Mr. Kerner stated there need to be better communications between Commissioners and their Alternates. Mr. Zoschak stated that Commissioners cannot disclose what was discussed in Executive Session. Counsel Weyl stated that if an issue is carried forward to another Executives Session there should be a summary briefing or Counsel can address this issue during Executive Session.

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Mr. McCarthy stated he has issues regarding the Attorney General's opinion and feels obligated to bring those to the attention of the Commissioners present. Mr. McCarthy made a motion to adjourn to Executive Session to discuss the issue further. Mr. Kerner seconded the motion. Mr. Volk clarified that those that vote in favor of the Executive Session would be interested in discussing the issue further and those that vote against executive session would be accepting of the current policy.

### ROLL CALL:

DeStefano	No	Zoschak	No
Gantert	Yes	Hughes	Yes
Kerner	Yes	McCarthy	Yes
Klipstein	No	Risko	No
McCabe	No	Ondish	Yes
Volk	No		

Motion did not carry 6 to 5.

Mr. McCabe made a motion to adjourn at 9:50 p.m. Mr. Hughes seconded the motion. All those in favor signified by saying "aye" and those opposed by saying "no." There being a unanimous "aye" the motion was carried.

Submitted by: Donna Macalle-Holly