

Minutes of the Lake Hopatcong Commission

February 22, 2011

A meeting of the Lake Hopatcong Commission was held on February 22, 2011 at the Mount Arlington Municipal Building, 419 Howard Boulevard, Mount Arlington, New Jersey. At 7:03 p.m., Chair Felter called the meeting to order and stated that the meeting was being held in accordance with "Open Public Meetings Act."

Salute to the Flag: Chair Felter and all those in attendance joined in a salute to the flag.

Moment of Silence: Chair Felter asked for a moment of silence for troops serving abroad.

Roll Call:

Present: Betty Lou DeCroke, Tom Foley, David Jarvis, Daniel McCarthy, Kerry Pflugh (7:15), Joel Servoss, Barbara Kinback (Roxbury Alternate), Robert Mitchko (Jefferson Alternate), Chairman Felter

Absent: Elizabeth Gantert, Richard Zoschak

Alternates Present: Edward McCarthy (Morris County)

Ms. Macalle-Holly stated Mr. O'Connor is no longer serving and a replacement has not been named yet. With eight members present at Roll Call, Chair Felter declared a quorum.

Communications

There being no comments, the Chair moved to the Treasurer's Report.

Treasurer's Report/Payment of Bills

In Ms. Gantert's absence, Ms. Macalle-Holly stated the Valley National Bank checking account balance as of December 31, 2010 was \$105,332.43. The Bill List of \$24,351.68 for bills from January and February was submitted for approval. Ms. DeCroke made a motion to approve the Bill List and Mr. Servoss seconded.

ROLL CALL:

DeCroke	Yes	Servoss	Yes
Foley	Yes	Kinback	Yes
Jarvis	Yes	Mitchko	Yes
McCarthy	Yes	Felter	Yes

Motion unanimous.

Approval of December 13, 2010 Meeting Minutes

Mr. McCarthy made a motion to approve the December 13, 2010 Meeting Minutes and Mr. Mitchko seconded. The Chair requested a roll call vote.

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ROLL CALL:

DeCroce	Abstained	Servoss	Yes
Foley	Yes	Kinback	Abstained
Jarvis	Yes	Mitchko	Yes
McCarthy	Yes	Felter	Yes

Motion carried 6-0-2 (two abstentions).

Approval of January 31, 2011 Special Meeting Minutes

Mr. McCarthy made a motion to approve the January 31, 2011 Special Meeting Minutes and Mr. Servoss seconded. The Chair requested a roll call vote.

ROLL CALL:

DeCroce	Yes	Servoss	Yes
Foley	Abstained	Kinback	Yes
Jarvis	Yes	Mitchko	Abstained
McCarthy	Yes	Felter	Yes

Motion carried 6-0-2 (two abstentions).

Lake Hopatcong Alliance (LHA) Update

Mr. Steve Gebeloff of the Alliance provided an update. The Alliance has been monitoring the Greenwood Lake Commission efforts to implement user fees. A meeting was attended to discuss fees hosted by New York State Assemblywoman Annie Rabbit. The standing room only attendees were overwhelmingly against user fees. He reported the user fees of \$517 already collected and sent to Albany for deposit to the dedicated, non-lapsing Greenwood Lake Account is missing. He stated Albany has been raiding the Lake George Boat User Fee program which has been used as a model for New York and New Jersey. He reported further on the Greenwood Lake user fee legislative process. Mr. Gebeloff reported on Greenwood Lake aeration project to reduce phosphorus levels and weed growth which contributed to a nine inch increase in water depth since the project began. The LHA has been in touch with the company running the project and is considering it's suitable for Lake Hopatcong grant project. The LHA would like to schedule a meeting with the Commission and Princeton Hydro to discuss the lake survey and implementation of weed management projects for this summer. In response to Ms. Macalle-Holly's inquiry, Mr. Gebeloff stated the Alliance has a preliminary report they want to get together and go over.

Mr. Servoss inquired about representation from the State Police. Ms. Macalle-Holly stated a member was supposed to be present tonight, but the officer assigned is on vacation.

Commissioners' Comments

Mr. McCarthy asked Ms. Pflugh about getting the open State seat on the Commission filled which will be unfilled for almost five years. There was discussion on how the Commission has been in touch with the Governor's Appointment Office. Ms. DeCroce stated that the Governor's Office is probably looking for recommendations. Appointments are moving very slowly and nothing has been approved. It was agreed that Chair Felter would send recommendations to Ms. Pflugh and Ms. DeCroce for submission to the Appointments Office.

Public Comment

Chair Felter opened the meeting to public comment with a three minute time limit per speaker.

Steve Gebeloff, resident of River Styx discussed the proposed Lake Hopatcong Water Level Management Plan and the 12 cfs minimum outflow. He stated the Millers' ruling which is the basis for the 12 cfs has been discredited. He provided last thoughts before the Commission makes its decision to support the draft water level management plan reading a quote from a May 23, 2009 Star-Ledger article. He discussed how the outflow was reduced in 2009. At that time, the LHA and Musconetcong Watershed Association examined the downstream conditions under the reduced flow. He quoted from the Musconetcong River News, summer 2009 describing the project.

The Chair agreed that public speakers could waive their opportunity to speak for two minutes during the second public comment to finish their remarks during the first comment. Mr. Gebeloff continued his remarks. He stated one should not be fooled into believing the 12 cfs is necessary to preserve the ecology of the river. Downstream municipalities are getting ready to develop the Route 57 corridor and he quoted from a January 11, 2011 article about this. He stated the fight for our water is an economic fight not an ecological fight and should not be lost on the Commission's watch.

John Kurzman provided a package of information. He discussed the Commission legislation to protect the lake and how the Commission makes recommendations to the DEP. He stated the Commission should make it clear that it does not agree with the 12 cfs which is a major increase. He discussed his spreadsheet which shows there are many years the lake outflow was lower than 12 cfs which he quantified and gave examples of through the decades. He stated the 12 cfs is a fantasy and has never been followed. Since it was attempted in 2003, it has been a problem. He provided a copy and discussed a 1923 USGS letter about the Millers' Agreement which states the reason to drain the lake was because of two 15HP motors. The agreement was to be used for the milling operations and it would be an effective rate of 3cfs. It is ridiculous for anyone to consider the Millers' Agreement. He stated the one foot rule that the downstream users have fought against does not help the people on the lake or downstream. It is better to get rid of the 12 cfs and allow the lake to conserve water as was done in years past and the one foot exclusion will not be needed. He referenced the table he provided by month that shows typically in March the lake outflow is down to 4cfs and the NJGS report which shows the median low flow for the summer months was 11 cfs. Now instead of being the media, 12 is the minimum. He discussed a 1920 book, Lake Hopatcong the Beautiful: A Plea for its dedication as a Public Park and included excerpts from it in email to the Commission. He stated the Commission must come out against the 12 cfs and send the plan back to the CAC for review.

Mr. Cliff Beebe, Beebe Marine, discussed how the State does not own the lake and how it is a matter that has to be settled before the courts. The Commission cannot make a decision for the private people on the lake and what the level of the lake should be. The

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law says the lake should be kept full and the law cannot be violated. The Commission is being used as scapegoat. The flowage rights were 415 acquired by the Morris Canal and Banking Company and they had deeds to around 45 around the park area. He discussed the history of the Canal and the property rights. He discussed the spillway for Lake Musconetcong stating it was built well after the spillway on Lake Hopatcong. There was an agreement between the Sussex Iron Company and the Morris Canal and Banking Company to manage the water sources of the Musconetcong River which resulted in the construction of the dam in Netcong and formed a water reservoir which is the present day Lake Musconetcong. The water should come from Lake Musconetcong during shortages because Lake Hopatcong must be kept full. [Mr. Beebe provided documents to the Commission.]

Princeton Hydro Report/Grants Update

Ms. Macalle-Holly stated Dr. Lubnow could not attend due to a family emergency. She provided a grant update. The Commission received approval from Hopatcong engineer to move forward with Crescent Cove project from the first 319 grant. The Commission needs to hear back from Commission Counsel on one issue. Hopefully it will go out to bid in the next couple weeks so the contract can be awarded in March to get the project completed before Memorial Day when the Beach Club opens.

For the EPA TWG the Commission is still working with the Jefferson Daycare to get the alternate septic system in and is hopefully it will go forward.

For the current 319 grant there were extensive letters in the meeting package from Princeton Hydro to Morris County for the King Cove project in Roxbury and to Jefferson Township about their project. PH evaluated a few devices that are NJ-CAT certified and approved by the DEP. Morris County seems to be okay with PH recommendation and PH will move forward with the design plans. Jefferson Engineer is still reviewing the plans. PH is still developing the rain garden project for the State Park.

Old Business

Use of Ice-Eaters on Lake Hopatcong

Ms. Macalle-Holly stated since she was not at last month's meeting, she reported that she developed the Commission webpage and sent the web link to the municipalities. She noticed that Jefferson Township did have a link, but she did not notice if the other towns had a link to the webpage. The media did a great job in helping the Commission get the word out with a lot of good press coverage. Most importantly, there is more solid ice this year than last year. Although there are pockets of water by docks, the main body of the lake is frozen over. Hopatcong and Jefferson did respond to public inquiries about areas of concern. Chair Felter thanked Jefferson Administrator Jim Leach for being on top of the issue, sending out letters and sending people to take a look at areas. Mr. McCarthy stated he took a snowmobile ride earlier today on the lake and there are a few places that are close to judgment calls, but nothing like last year. He was pleased with the public education component and press coverage and people are starting to understand. The

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Chair thanked Mr. McCarthy as the driving force behind the effort. Ms. DeCroke suggested sending notification to the towns that did not link in to the Commission site.

Lake Hopatcong Water Level Management Plan

The Chair stated the Commission would compile comments to send to the DEP and CAC and he opened it up to Commissioners.

Mr. Mitchko stated his comments were about the amount of the outflow.

Mr. Jarvis stated he shares Mr. Kurzman's concern and there is historical data that shows 12 cfs has not been the number and Mr. Gebeloff stated at 6.4cfs there was no damage. He expressed concern about protection for the lake particularly for areas of the canals if the lake were down 1 to 1-1/2 feet with regards to the fish. He stated it should be revisited with all the data to better manage or remove the 12 cfs if that is best. He would not support the plan yet.

Mr. Foley stated that Mr. Servoss brought up a good point at the last meeting that there should be a way to make a quick decision to close the gate and adjust the flow without a big bureaucracy delaying it.

Mr. Servoss stated the 12 cfs is out of line and it should be half of that at best. He stated he fears this is a done deal from the State's point of view. He does not like the one foot down rule and having to go through bureaucracy to close the gate.

Mr. Jarvis stated there should be a better explanation of the law and how it is overridden by the plan.

Mr. Kinback agreed with her colleagues. The 12 cfs is out of line and agrees that there is no quick mechanism in time of a drought or drawdown with the bureaucracy. She stated they are not worrying about the lake people and a common denominator needs to be quickly found in case of an emergency.

Ms. DeCroke stated the plan does not address the timetable when the lake is one foot down and the DEP should look at that.

Mr. McCarthy thanked his colleagues, Chairman Ondish and Chairman Felter for sitting on the CAC. He shares the 12cfs concerns, but there is a lot of good in the plan by keeping the 26" drawdown which is important to protect lakefront structures and keeping the 5 foot drawdown to maintain docks. There is an attempt to get the lake down faster and bring it up quicker. There is mention in last month's minutes of the 1922 court case of the Musconetcong Millers Association. He discussed his efforts at the Superior Court Records vault in Trenton to locate the case indicating he found nothing. You have to have the names of the parties and he will search Warren Manufacturing if he gets back to Trenton. He stated the statute conflicts with the plan which was raised by the Commission years ago which the Commission has not received a legal opinion on. Studies need to be done to determine the outflow.

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The chair directed Ms. Macalle-Holly to put these comments together and to send to Mr. Baier and CAC. Ms. Macalle-Holly read from the duties of the Commission which specifically speaks to water quantity for Lake Hopatcong and its watershed which falls below the dam. Due to Commission cutbacks water quantity studies were not completed, but it is still the Commission's charge.

LHC SFY2012 Proposed Budget

The Chair asked for comments or questions on the budget which was included in the December package. The Chair stated there was some disagreement on the proposed budget, but in the Governor's budget address today he did not say he was sending money to the Commission. Money will not be coming very readily to Lake Hopatcong and the Commission must decide what it will do. The Chair stated all the list of funding options should be revisited. Some municipalities want to help and they can to a point. The Chair stated there are groups that want to see the Commission fail, but that is not going to happen. He stated the Commission needs to weed harvest one way or another.

Mr. E. McCarthy asked if there was any progress to making the Commission an authority so funds can stay here as they do with the Parkway, Port Authority and some others. The Chair stated it is being discussed, but he left that to the Senators and Assemblymen. The Chair stated the only way he would do anything if the Commission could collect funds itself and be responsible for it. The Chair stated more people would be for fees if it could remain at the lake. Ms. Kinback stated the funds would have to be constitutionally dedicated. She used the State Police example to modernize their Medivac and how it was raided as were many other funds. The Chair stated the Commission cannot use volunteers, raise its own funds and the State is not giving the Commission any funds. The Commission has to be as creative as possible so if someone is trying to pass legislation then we need to support them. Ms. Pflugh stated there are discussions happening and the Commission should wait to hear those results. She discussed fee models used at Greenwood Lake and Lake George.

The Chair stated there were previous discussions about putting more people in the budget, but it does not send the right message to Trenton. This budget sends the message that the Commission is trying to run as lean as it can to accomplish its goals. Mr. Jarvis asked if the budget is for new employees with the benefits and pension. Ms. Macalle-Holly stated it was for two employees for an Administrator and Foreman and seasonal employees. If employees are full-time they have to participate in the State benefit plan. The Chair asked for a motion on the budget. Mr. Jarvis made the motion and Ms. Kinback seconded. The Chair stated the budget would be sent with a cover letter and it would be distributed for Commission review again. The Chair requested a roll call.

ROLL CALL:

DeCroce	Yes	Servoss	Yes
Foley	Yes	Kinback	Yes
Jarvis	Yes	Mitchko	Abstained
McCarthy	Yes	Felter	Yes
Pflugh	Abstained		

Motion carried 8-0-1 (one abstention).

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Mr. Jarvis voted yes but he would like a note that pensions are mandated for full-time positions. The Chair asked that his note be included in the cover letter.

Sub-Committee

The Chair stated that since the person doing the site plan reviews is no longer on the Commission, Mr. Foley has agreed to pick that up. The Chair stated if Mr. Foley has a conflict with Mount Arlington since he is on the Planning Board, he will find someone else to review it. Mr. Foley stated he could recuse himself on the planning board. The Chair thanked Mr. Foley.

New Business

As there was no new business on the agenda, the Chair moved to Public Comment.

Public Comment

Mr. Sorensen, Lake Hopatcong Marine, stated there must be some kind of weed harvesting this summer. He is frustrated because he made a offer to the Chairman that he would personally, at his own expense, use his marina mechanics in the off season to put a harvester together and he would amass volunteers to staff the harvester for the full summer season. His employee, Bob Place, worked on and operated the harvester for five years so the experience is there. He is frustrated because of the bureaucracy in place and this cannot happen. There must be some loopholes and ways to work around using volunteers. The Chair stated it comes down to insurance. The Commission was advised by the Commission Attorney General that the Commission cannot use volunteers. He is looking at options for ways the towns could possibly do it. Mr. Sorensen stated the State should work with the Commission to make it self-sufficient. He stated the Commission should look for loopholes to make the volunteer thing work. In response to an inquiry, Ms. Macalle-Holly stated that she believe the harvester operator for Lake Musconetcong is hired through a seasonal employee at the State Park. Ms. Kinback stated the State Park has 12 open positions and questioned why the Commission could not use the park staff to run the harvesters.

Mr. Clancy stated he was glad to see discussion about this important issue then all the discussion on the lake level. He stated people spend money on the activities they like. As a fisherman he enthusiastically buys a license every year. It is not unreasonable to have a user fee which is the only solution to bring a steady stream of revenue required to maintain the Commission. Governments are broke. If you want to golf, you pay a tee fee. If you bowl, you pay to go bowling. If you want to go to the beach, you pay to get on it. If the Commission puts together a viable program, the Administration might say there is some bridge money until there is a self-sufficient revenue steam. The value of homes, businesses on the lake are all going to be negatively impacted if the Commission does not move forward. The Commission needs to develop a reasonable fee to prevent the lake from declining.

Kurt Svenson, Flash Marina, inquired about the charge of the Commission. Ms. Macalle-Holly re-read one of the eleven responsibilities of the Commission regarding water quality and water quantity. In response to Mr. Svenson's inquiry, Mr. McCarthy

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responded that the watershed is 16,000 acres that drains into Lake Hopatcong. There was discussion about Lake Hopatcong watershed and Musconetcong River watershed and where the lake's watershed ends within Musconetcong. He questioned what the Commission responsibility is. The Chair stated the Commission needs to address what happens down river especially in regard to the wild and scenic river. Mr. McCarthy discussed how water has to leave a lake to be healthy. Mr. Svenson's stated the Commission's charge is not the DEP. The DEP's charge is NJ's environment. When the lake is a foot down it all changes.

There being no further public comment, at 8:25, Mr. McCarthy made a motion to adjourn and Mr. Servoss seconded. Motion was unanimous.

Prepared by: Donna Macalle-Holly