



Long Creek Watershed Management District Board of Directors
Minutes from February 27, 2019 Meeting
Location: Town of Scarborough Municipal Building — Council Chambers,
259 U.S. Route 1, Scarborough, Maine

- 1. Call to Order:** Mr. Dillon called the meeting to order at 9:04a.m.
- 2. Roll Call:**
 - a. Attendance: Angela Blanchette, Fred Dillon, Sean Donohue, Eric Dudley, Brian Goldberg, Craig Gorris, Will Haskell, Susan Henderson (arrived at 9:17a.m.), Doug Roncarati
 - b. Absent: Curtis Bohlen, Arthur Colvin, Peter Newkirk, Ed Palmer, Michael Vail
 - c. Staff/Guests: Peter Carney (Long Creek Watershed Management District), Chris Brewer (Cumberland County Soil & Water Conservation District), Jim Katsiaficas, Esq. (Perkins-Thompson); Taylor LaBrecque (Maine DOT)
- 3. Review of Board Meeting Minutes:**
 - a. The Board reviewed the minutes from the January 15, 2019 meeting.
 - b. **Mr. Haskell made a motion to accept the minutes from the January 15, 2019 meeting. Mr. Goldberg seconded the motion. The motion carried unanimously.**
- 4. Treasurer's Report:**
 - a. Mr. Brewer, LCWMD's Fiscal Agent, reviewed the January Financial Report and the Receivables report.
 - b. An update was provided on the Maine Department of Environmental Protection's ("Maine DEP") efforts to require payment of past-due assessments as violations of permitting requirements.
- 5. A Partner in Technology, Approve Contract with Revised Insurance Limits:**
 - a. Mr. Carney advised that LCWMD's current contract with A Partner in Technology ("API"), LCWMD's information technology contractor, is nearing its termination date at the end of this month.
 - b. Mr. Carney noted that this contractor manages LCWMD's water quality monitoring database and provides day-to-day on-call support to address LCWMD's information technology needs.
 - c. Mr. Carney advised that a new contract with a not to exceed limit of \$2,500, the monetary limit for the Executive Director to enter into contracts without competitive bidding, has been prepared for API for continued information technology support services.
 - d. LCWMD typically requires contractors to carry \$2,000,000 in General Liability insurance and \$2,000,000 in Automobile Liability insurance.
 - e. API carries \$1,000,000 in Automobile Liability insurance.
 - f. Mr. Carney noted that for API's prior contracts with LCWMD the Board authorized modifying the Automobile Liability insurance requirements in the Services Agreement with API from \$2,000,000 to \$1,000,000, based upon API's work being performed remotely.
 - g. Mr. Carney referred the Board to the proposed motion in today's Board packet for action on this item, which would authorize the District's Executive Director to enter into a Services Agreement with API with Automobile Liability insurance in the amount of \$1,000,000,

combined single limit, rather than the typically required \$2,000,000, based upon API representing and warranting that the work under the Services Agreement will be performed remotely.

- d. **Mr. Goldberg made a motion to authorize the District's Executive Director to enter into a Services Agreement with API with Automobile Liability insurance in the amount of \$1,000,000, combined single limit, based upon API representing and warranting that the work under the Services Agreement will be performed remotely. Mr. Dudley seconded the motion. The motion carried unanimously.**

6. Long Creek Watershed Management District, Rules and Regulations, Proposed Revisions:

- a. At the January Board meeting, the Board raised and discussed the issue of whether LCWMD's interest rate on delinquent assessments is sufficient to serve as a deterrent to late payments.
- b. The Board asked staff to work with Mr. Katsiaficas to propose what might be an appropriate interest rate where assessments remain unpaid and to suggest any appropriate changes to the "Default Payment Fees" section of LCWMD's Rules and Regulations.
- c. Mr. Katsiaficas noted that the Interlocal Agreement establishing LCWMD provides in Section 4.B(5) and in Section 5.D that the Board has the power to "adopt or amend rules to govern the conduct of its meetings and other affairs of the Board and the District," and in Section 5.N authorizes the Board "to take any legal action necessary to ... collect unpaid or delinquent assessments or fees." The LCWMD Board has used that power to adopt the "Long Creek Watershed Management District Rules and Regulations," addressing a number of matters. Section H. contains the "Default Payment Fees" Rule.
- d. The "Default Payment Fees" Rule currently provides for a 0.25% per month (or 3% per year) interest rate on delinquent assessments.
- e. Mr. Katsiaficas noted that in commercial real estate transactions, it is common to assess late penalties in the form of interest amounting to the prime interest rate (currently just over 5%) plus some amount, or an annual interest rate of between 8 and 12% (the latter being equivalent to 1% per month).
- f. Mr. Katsiaficas prepared memo suggesting that a 1% per month (12% per year) interest rate might be appropriate where delinquencies continue after six months. A copy of the memo and draft amendment to LCWMD's Rules and Regulations, which also makes a few minor housekeeping changes to the Rules and Regulations, are included in today's Board packet for the Board's review.
- g. Mr. Katsiaficas referred the Board to the proposed motion in today's Board packet for action on this item, which would amend the "Long Creek Watershed Management District Rules and Regulations" to establish an interest rate of 1.0% per month on the outstanding balances of assessments that are unpaid after six months, and to make minor additional changes as shown in the attached draft.
- h. **Mr. Roncarati made a motion to approve revisions to the Long Creek Watershed Management District's Rules and Regulations as provided in the draft included in the Board packet. Mr. Haskell seconded the motion. The motion carried unanimously.**

Ms. Henderson joined the meeting.

7. Disposition of iPads and Monitoring Equipment:

- a. Mr. Carney asked the Board to direct their attention to the inventory included in today's Board packet.

- b. Mr. Carney noted that the inventory includes Apple iPads and monitoring equipment, a current meter and weather station, that are no longer in use by LCWMD.
- c. Mr. Carney advised that the Apple iPads were used by field staff for LCWMD's annual parcel inspection program. The iPads are dated, and the software is no longer updateable which limits their functionality.
- d. The monitoring equipment has not been used in several years and has been in storage at the Cumberland County Soil & Water Conservation District's office.
- e. Mr. Brewer noted that the iPads could be sent to an electronic waste recycler in return for a nominal payment.
- f. Several Board members suggested that the monitoring equipment could be donated to another nonprofit, or an academic institution, which might be able to use the equipment.
- g. **Mr. Haskell made a motion to authorize the Executive Director to sell, donate, or otherwise dispose of the property identified in the inventory with the decision to sell, donate, or otherwise dispose of the property at the discretion of the Executive Director. Mr. Roncarati seconded the motion. The motion carried unanimously.**

8. Main Stem Restoration Project Status:

- a. Mr. Carney provided a status update on the easements necessary to construct the Main Stem restoration project.
- b. Mr. Carney noted that LCWMD has not been provided with the easement for the Cornerbrook LLC property and that Cornerbrook LLC's compliance status with Long Creek Watershed permitting requirements is presently the subject of an enforcement action by Maine DEP.
- c. Recent information provided by Maine DEP indicated that the enforcement matter with Cornerbrook LLC would likely need to be resolved by court action, which could take months.
- d. Mr. Carney noted that the design documents, bid specs, and permitting applications for the Main Stem restoration project are nearing completion and that LCWMD will be ready to move forward with the next steps in the project soon.
- e. Mr. Carney advised that he is seeking guidance from the Board on whether to proceed with the project without the Cornerbrook LLC easement or put the entire project on hold until the Cornerbrook LLC easement is received.
- f. The easements are necessary to file the permit applications to establish title, right, or interest, in other words, to establish LCWMD's authority to construct the project.
- g. The Cornerbrook LLC parcel is at the downstream end of the restoration reach so it is feasible to complete the work on that parcel at a later date. The other work is upstream and would not be impacted by performing the downstream work later.
- h. However, performing the work in two phases would increase costs due to additional administrative costs related to the complexities of bidding and permitting two phases and increased construction costs related to additional mobilization and construction oversight.
- i. Mr. Roncarati asked, is it possible to incorporate additional costs related to phasing the project into the enforcement agreement being pursued by Maine DEP? Mr. Roncarati said we should ask Maine DEP if this can be done.
- j. Mr. Haskell noted that construction contractors are very busy and that prices are about 25% higher than in the past few years. This should be considered as part of the discussion as better pricing may be obtained if the project is carried into next year.
- k. Mr. Donohue noted that we need to be cautious of the prohibition against performing work after September 30 due to potential impacts on fish habitat.

- l. Mr. Dillon asked, what are the impacts of removing the Cornerbrook LLC parcel from the project on the project's overall effectiveness?
- m. Mr. Carney noted that many of the habitat improvement elements of the project are located on upstream parcels, and that those aspects of the project will still provide benefits. The floodplain restoration aspect of the project would be significantly impacted because the Cornerbrook LLC parcel contains the large detention basin in the floodplain that is slated for removal.
- n. Mr. Dillon asked, when would bidding be most advantageous to obtain the best pricing?
- o. Mr. Carney noted that there are so many variables to consider with construction, growing season, fish, long-eared bat habitat, *etc.* There is no perfect time to start work and cost cannot be the driving factor because of the other constraints.
- p. Mr. Carney noted that timeline discussions with John Field, the project design lead, likely place construction in the July 15 to September 30 window, unless we can request a waiver.
- q. Ms. Blanchette reiterated Mr. Donohue's concern of completing construction prior to September 30. Ms. Blanchette noted that it has been her experience that IF&W is relatively inflexible with respect to extending the window for construction past September 30.
- r. Mr. Dudley suggested that there may a price correction coming in the construction industry soon which may lean toward constructing later to take advantage of any such correction.
- s. Mr. Carney noted that although there may be premiums at this time for construction costs and phasing of the project, at least some of these additional premiums will be offset by the lower-than-anticipated estimated cost to construct the project. The revised project construction cost is now \$550,000, rather than the originally-estimated \$750,000, because several fill removal areas have been dropped from the project. There is room for cost premiums to be managed within the current budget.
- t. Mr. Donohue offered that it seems to make sense to phase the construction project to work around the Cornerbrook LLC issue. Mr. Donohue suggested that we file the permits now without the Cornerbrook LLC work. Moving forward will go toward showing progress as the permit renewal date comes up in June 2020.
- u. Mr. Carney noted that in the permit application process LCWMD will need to indicate how it intends to construct the project. Phasing will also need to be considered in the construction bidding process. The RFP process can take several months. LCWMD can file the permit applications and simultaneously put out the RFP. If the permits do not come through, the RFP process would allow the Board to reject all bids.
- v. The Board reached a consensus that LCWMD should file the permit applications now, removing the Cornerbrook LLC parcel work, as necessary; initiate the RFP process including the Cornerbrook LLC work as a bid alternate; and request that Maine DEP include the additional costs for phasing the project into Maine DEP's enforcement action with Cornerbrook LLC.

9. Long Creek Watershed Management Plan Discussion:

- a. Mr. Carney noted there are a few significant issues that the Board should discuss with respect to the next permit cycle and revisions to the Long Creek Watershed Management Plan. These are the impacts of new development and redevelopment, taking advantage of opportunistic retrofits, and chlorides management.

- b. Mr. Carney noted that in the last few years we have not been seeing a lot of new development or redevelopment in the watershed. However, in the last few months we have seen a substantial increase in rate of new development and redevelopment in the watershed.
- c. Mr. Carney noted that the municipal planning offices, particularly the South Portland planning office, has been proactive in informing LCWMD of planning board applications. Further, the South Portland planning office has encouraged applicants to work with LCWMD on stormwater management issues prior to filing applications.
- d. The City of South Portland wants to have LCWMD's comments on projects when they are presented to the Planning Board. The goal is to get LCWMD involved in the process early so LCWMD has time to comment and work with developers to improve stormwater management when opportunities arise.
- e. Mr. Carney said this raises the question of how we consider development pressure in the watershed management plan with respect to the "adaptive management" concept incorporated into the plan. Examples of the redevelopment we are seeing include smaller redevelopment in the Maine Mall and Running Hill areas; the Maine Turnpike widening and redevelopment of Exit 45; and potential conversion of the Sable Oaks golf into housing and mixed-use development.
- f. Mr. Carney asked, how open is the Board to making funds available for LCWMD to take advantage of opportunities that are arising now?
- g. Mr. Carney suggested that the "adaptive management" concept in the watershed management plan could be used to adapt to the dynamic situation we are seeing with respect to significant new development and redevelopment projects in the watershed.
- h. There was a consensus among the Board that LCWMD should monitor development proposals and bring any potential opportunities to the Board for consideration of funding.
- i. Mr. Roncarati noted that LCWMD should anticipate additional development of more parking areas for the Portland Jetport based on its growth.
- j. Ms. Henderson suggested that as we look back on the first ten years of project implementation during the permit renewal process, the lessons learned in Long Creek should be considered and incorporated into model ordinances piloted in the four municipalities in which the Long Creek Watershed lies and eventually be shared county wide. These ordinances should consider stream buffer protections and follow up and maintenance requirements.
- k. Mr. Dillon suggested that LCWMD should reach out to the Center for Watershed Protection and the University of New Hampshire Stormwater Center and establish a committee to work on model ordinances.
- l. Mr. Carney said that the Board also needs to consider how LCWMD incorporates management of chlorides in a revised or updated watershed management plan. Should chlorides be addressed through further outreach, or increased regulation?
- m. Mr. Roncarati recommended that the Board consider supporting a Green SnowPro legislative effort similar to what New Hampshire has.
- n. Mr. Katsiaficas suggested a chlorides study to determine if this pollutant is the "driver" we need to be concerned about for the next permit cycle.
- o. Mr. Dillon suggested establishing a subcommittee to tackle the issues presented today.

10. Public Comments: None.

11. Next Meeting: The next meeting will be held on March 26, 28, or April 3, 2019 at 9:00a.m. at with the location to be determined. Mr. Carney will circulate a poll via email to Board members to determine the best meeting date.

12. Adjourn: The meeting adjourned at 11:00a.m.