



Long Creek Watershed Management District Board of Directors

Minutes from February 28, 2017 Meeting

Location: Town of Scarborough Municipal Building - Town Manager's Conference Room,
259 U.S. Route 1, Scarborough, Maine

1. Call to Order: Mr. Bacon called the meeting to order at 9:05a.m.

2. Roll Call:

- Attendance: Dan Bacon, John Branscom, Arthur Colvin, Fred Dillon, Brian Goldberg, Will Haskell, Susan Henderson, Peter Newkirk, Doug Roncarati, Michael Vail
- Absent: Curtis Bohlen, Craig Gorris, Ed Palmer, Adam Pitcher
- Staff/Guests: Peter Carney (LCWMD Executive Director), Aubrey Strause (Cumberland County Soil & Water Conservation District), Jim Katsiaficas, Esq. (Perkins-Thompson)
- Mr. Bacon welcomed new Board members Will Haskell and South Portland City Councilor Susan Henderson. The Board members, staff, and guests in attendance introduced themselves and described their roles with the District. Mr. Haskell and Councilor Henderson provided background information relevant to their new roles as District Board members.

3. Review of Board Meeting Minutes:

- The Board reviewed minutes from its January 18, 2017 meeting. Mr. Vail made a motion to accept the minutes from the January 18, 2017 meeting, seconded by Mr. Dillon. The motion carried unanimously. No revisions were requested.

4. Treasurer's Report:

- In Mr. Bohlen's absence, Mr. Carney provided an update on the January Financial Report.
- Mr. Carney advised that Account 6275, which comprises contracted staff time from the Cumberland County Soil & Water Conservation District ("CCSWCD"), is trending high for this point in the District's fiscal year. The January Financial Report reflects that approximately 80% of the CCSWCD budget for FY2017 has been spent. This was discovered when the October, November, and December CCSWCD invoices were posted in January 2017. Because these three invoices did not post until January 2017, monthly financial reports for November and December 2016 did not accurately reflect the amount of the CCSWCD budget expended at those times. Mr. Carney advised that he is working with Ms. Strause to trend the CCSWCD budget toward its allocated budget by the end of FY2017 with the intent to be on, or close to, budget by the end of FY2017.
- Ms. Strause advised that CCSWCD has implemented revisions to its internal practices to ensure that CCSWCD hours allocated to LCWMD work are reviewed and approved by her each week.

- Ms. Strause advised that preparation of supporting documentation requested by LCWMD with respect to the October, November, and December CCSWCD invoices will not be billed to LCWMD. In addition, Ms. Strause advised that approximately 100 hours of her time for development of the inspection and maintenance request for proposals will not be billed to LCWMD.
- Mr. Carney further advised that Account 5047, for maintenance, also appears to be over budget for FY2017. However, this is primarily due to approximately \$35,000 in “repair” work, which is technically outside the scope of the maintenance budget, that was charged against this account because it was performed by one of the maintenance contractors.
- There was a brief discussion of the Accounts Receivable Aging Summary, which is noticeable longer this month. Ms. Strause advised that the increased number of accounts appearing on the summary is primarily attributable to late payments for Participating Landowner assessments that were due on February 15, 2017. It is anticipated that many of these past due accounts will drop from next month’s summary as late payments are received.

5. Executive Director Update:

- Mr. Carney advised that the inspection and maintenance request for proposals was issued on February 24, 2017 and proposals are due on March 24, 2017. Mr. Carney advised that the Board has flexibility in timing to award contracts under the request for proposals, but that a contract for pavement sweeping should be awarded no later than later March or early April to ensure that annual post-snow melt pavement sweeping can occur in early-to-mid April.
- Pursuant to the terms of his employment with LCWMD, Mr. Carney made a request to carry forward 24 hours of vacation time from calendar year 2016 to calendar year 2017. The Board approved the request unanimously.

6. Committee Reports:

- Mr. Carney provided an update on the Finance Committee meeting from February 15, 2017.
- Mr. Carney related that the discussion focused on a review of construction projects including the “Greening of the Maine Mall,” the in-stream restoration of the Main Stem of Long Creek between Main Mall Road and Foden Road, and retrofit of the Hannaford detention basin.
- There appeared to be a consensus among the Finance Committee that the portion of the Greening of the Maine Mall project that drains into the South Branch of Long Creek should be tabled indefinitely given the possibility of redevelopment at the Maine Mall. Furthermore, the flooding issues in the South Branch that originally delayed the project have yet to be rectified.
- Mr. Carney advised that the portion of the “Greening of the Maine Mall” project that does not drain into the South Branch could potentially be constructed. The design for the project is presently 75% complete. However, the design contract with Horsley

Witten Group has expired and some mechanism would need to be employed to renew the Horsley Witten Group contract.

- Mr. Roncarati said that he believed construction of only the portion of the “Greening of the Maine Mall” project that does not drain into the South Branch would not provide much value for water quality. Mr. Roncarati advised that a primary benefit of such a project could be installation of large canopy trees and root systems to provide shading to manage temperature and absorb runoff, however, it is Mr. Roncarati’s understanding that the “Greening of the Maine Mall” project does not specify installation of large canopy shade trees, thereby, limiting its effectiveness. Mr. Roncarati stated that he believes that the retrofit of the Hannaford basin would provide a greater benefit to improved water quality and that he would like to see the Hannaford basin retrofit take priority over the “Greening of the Maine Mall” project.
- Mr. Colvin also voiced support for focusing on the Hannaford basin rather than the “Greening of the Maine Mall” project. Mr. Colvin though it made more sense to focus on the Hannaford basin as it would have a water quality benefit in the Main Stem of Long Creek where LCWMD is headed toward making a significant financial investment with the Main Stem in-stream restoration project.
- There was a consensus that Mr. Carney should identify the status of the Horsley Witten Group contract for the Greening of the Maine Mall project, but take no action beyond this, and that the construction priorities should focus on the Main Stem in-stream restoration project and retrofit of the Hannaford basin.
- Mr. Carney advised that the Main Stem Committee will convene soon and that the Main Stem Committee’s recommendation on the scope and construction budget for the Main Stem in-stream restoration project would then be brought to the Finance committee.
- Mr. Carney advised that the Technical Advisory Committee met on February 21, 2017 and made several recommendations on revisions to the Long Creek Monitoring Plan and associated Quality Assurance Project Plan (“QAPP”). These revisions will be incorporated into a redraft of the Long Creek Monitoring Plan and QAPP.
- Mr. Newkirk provided a summary of the South Branch Committee meeting that was held on February 2, 2017, and reviewed the notes from that meeting that were included in the Board packet.
- The primary point of discussion at the February 2, 2017 South Branch Committee meeting was the dredge material disposal estimate prepared by Ms. Strause.
- It was noted that the disposal estimate does not include costs for: staff time to collect additional samples, delineate areas for excavation, or perform construction inspections; construction equipment; site labor; permit development or fees; dewatering equipment; construction of cofferdams; ancillary equipment; water quality monitoring; or other related services.
- The South Branch Committee agreed that it would be helpful to have a complete cost estimate for conducting maintenance in the portion of the South Branch at issue. The committee requested that the Board authorize time for Ms. Strause to complete the maintenance estimate.

- Ms. Strause provided an estimate of \$932.00 to complete the South Branch maintenance estimate.
- There then ensued a larger discussion on performing maintenance dredging in the South Branch. It was questioned whether LCWMD would take on responsibility of dredging and who would be responsible for ongoing maintenance if the maintenance is done.
- Concern was raised that proposed maintenance will change flow and change hydrology downstream and that these effects should be studied before performing dredging.
- Mr. Bacon advised that he thought it would be worth completing the maintenance estimate given the cost of less than \$1,000.00. Several other Board members voiced support for completing the maintenance estimate.
- Mr. Vail made a motion to approve the \$932.00 estimated by CCSWCD to complete maintenance estimate.
- Mr. Roncarati questioned the impacts on hydrology downstream and whether the maintenance will have a negative impact downstream.
- Mr. Vail clarified that his motion was limited to authorizing the funds to for CCSWCD to complete the maintenance estimate and not to authorize funds to perform the maintenance work.
- Mr. Colvin seconded the motion, as clarified by Mr. Vail. The motion carried unanimously.
- Mr. Carney advised that Maine DEP Biologist, Jeff Dennis, would like to participate in future meetings of the Main Stem Committee.

7. Legal Update:

- Mr. Katsiaficas provided the Board with an update on non-profit Board member duties, records retention obligations, and Maine's Freedom of Access Act ("FOAA") obligations.
- Mr. Katsiaficas provided a handout to attendees entitled *Maine's Freedom of Access Act* dated December 7, 2017 (this topic was tabled from a previous Board meeting due to time constraints).
- Mr. Katsiaficas advised that Board members are subject to FOAA as LCWMD is a quasi-municipal entity.
- Mr. Katsiaficas advised the Board that FOAA has two primary components, provisions concerning "public proceedings" and provisions concerning "public records." The definition of public proceeding was reviewed and the requirement of allowing members of the public to attend public proceedings was identified, subject to the executive session exception.
- Mr. Katsiaficas advised that Board members must be physically present at Board meetings to vote.
- The definition of "public record" was reviewed and the requirement to allow members of the public to inspect and copy public records identified, subject to confidentiality exceptions identified in the FOAA.

- Mr. Katsiaficas advised the Board that the FOAA requires municipal entities, such as LCWMD, to designate a “public access officer.” The public access officer serves as the entity’s contact person with respect to public records requests made under the FOAA. The Board was advised to make this designation at its earliest convenience.
- Record retention schedules were briefly discussed and the general schedule for municipal records identified.
- Mr. Katsiaficas advised Board members that as directors of a non-profit corporation they are subject to Title 13-B, the Maine Nonprofit Corporation Act, and advised Board members that the Act requires them to conduct their duties in good faith, in a manner that a reasonable person would, and in the best interests of the corporation.
- Mr. Katsiaficas noted that Board members should be aware of LCWMD’s “conflicts of interest policy” and ensure that they follow said policy.

8. Board of Director Vacancies:

- The summary table of Board member appointments included in the Board packet was reviewed noting that the two remaining vacancies on the Board are appointments under the appointment authority of the City of Westbrook. One vacancy is for a municipal official or employee and the other for a private Participating Landowner whose parcel is located within the City of Westbrook.
- Mr. Goldberg expressed support for the search for a Participating Landowner focus on a true landowner, as opposed to a property manager, as persons directly impacted by the financial implications of the Long Creek General Permit need to have greater representation on the Board.
- Mr. Bacon said he would contact the City of Westbrook with respect to filling the municipal official or employee vacancy.

9. Annual Participating Landowner Meeting:

- At the January 18, 2017 Board meeting, the Board requested that Mr. Carney prepare a draft agenda for a yet-to-be-scheduled Annual Participating Landowner meeting.
- Mr. Carney handed out a draft agenda for discussion purposes.
- Revisions to the draft agenda were discussed.
- The original time window for the meeting was identified as late March or early April. However, for several reasons, including having final decisions on prioritization of construction projects, completion of the FY2018 budget, award of contracts under the inspection and maintenance request for proposals, and possibly having the annual report to Maine DEP available for the meeting, there was a consensus that it would be better to hold the meeting in mid-to-late May.
- The Board requested that Mr. Carney follow up with Mr. Palmer, who has typically hosted the meeting at the Marriott Hotel at Sable Oaks, to see if the meeting could be accommodated in mid-to-late May.

10. Public Comments:

- None.

11. Next Meeting: The next Board meeting will be held on March 29, 2017 at 9:00a.m., with the location to be determined at a later date.

12. Adjourn: The meeting adjourned at 11:21 am.