

Lake Auburn Watershed Protection Commission

Meeting Minutes

Special Meeting Monday, May 2, 2022

Location: Androscoggin Valley Council of Governments (AVCOG), Auburn, Maine

Time: Meeting began at 3:30 PM

Recording: The meeting was recorded.

Commissioners Present: Glen Holmes, Dan Bilodeau, Alan Holbrook, Evan Cyr, Amy Landry, Camille Parrish, Mary Ann Brenchick, Rick LaChapelle, Dan Dubé

Commissioners Absent: None

Others Present: Erica Kidd, Watershed Manager, and Amanda Meader, Legal Counsel.

Agenda Item 1: Minutes

None.

Agenda Item 2: Consent Agenda

None.

Agenda Item 3: Public Comment

Mary Sylvester of Auburn, and former Auburn Water District (AWD) Trustee, spoke in favor of the board having legal counsel go over the responsibilities and authority of LAWPC. She thought this was very important for board members and the public. She commended Chair Cyr's professionalism on the LAWPC board and on the City of Auburn Planning Board.

Janet Joseph of Auburn supported Ms. Sylvester's comments about legal counsel going over the responsibilities and authority of LAWPC. She stated she was at the meeting to learn more about who is responsible for protecting Lake Auburn.

Agenda Item 4: Staff Report

None.

Agenda Item 5: Old Business

None.

Agenda Item 6: New Business

The Commissioners and Erica Kidd introduced themselves to the new legal counsel for LAWPC, Amanda Meader.

Agenda Item 6a: Introduction of Legal Counsel

Amanda Meader introduced herself as the new legal counsel for LAWPC. She has been practicing law for 18 years and has always been a municipal law attorney. She has worked for different law firms in the past and now runs her own practice.

Agenda Item 6b: Discussion of LAWPC Board responsibilities and authority as described in the Interlocal Agreement

Chair Cyr initiated this discussion with board members.

Agenda Item 6bi: Review of LAWPC Board responsibilities under the Interlocal Agreement- Legal Counsel

Ms. Meader led a review of the LAWPC responsibilities. She said Commissioners are here to carry out LAWPC's mission, which is to protect Lake Auburn. She went over LAWPC's authority to hire an attorney and initiate legal action to protect the lake, make contracts, apply for grants, to buy and sell property, and to spend money. She said LAWPC has the power to take legal action to carry out its mission, and to adopt, interpret, and amend the watershed boundary of Lake Auburn. Ms. Meader read these powers from the 1993 Interlocal Agreement. She stated that the agreement gives LAWPC concurrent power to AWD to enforce laws, rules, and regulations. She read the first paragraph of the Interlocal Agreement, and reiterated that the responsibility of LAWPC is to protect water quality.

Agenda Item 6bii: Review of LAWPC Board authority under the Interlocal Agreement- Legal Counsel

Ms. Meader led a review of the LAWPC authority. She stated that LAWPC can make recommendations to AWD, and has the authority to step in AWD's shoes, meaning that whatever AWD can do, LAWPC can do. If LAWPC makes a recommendation to AWD, and AWD takes that action, and as a result AWD incurs legal fees, then LAWPC is responsible for paying AWD's legal fees. Ms. Meader referenced page 9 of the Interlocal Agreement and stated that AWD would be indemnified by LAWPC in that situation.

Commissioner Bilodeau said that AWD by-laws came in 1991, before the Interlocal Agreement of 1993, and that the by-laws are currently being updated.

Commissioner Brenchick asked for clarification on LAWPC having concurrent powers to AWD. Ms. Meader said this could be discussed in executive session. Discussion followed by Ms. Meader and Chair Cyr.

Commissioner Holmes asked if a recommendation coming from LAWPC has to be voted on. Ms. Meader answered yes. She said that if LAWPC asks AWD to take action and AWD does not, then LAWPC can take that action. AWD can adopt by-laws to prevent the pollution of Lake Auburn and can prescribe penalties for such pollution. AWD can go to court to stop an action, so LAWPC can do that as well.

Ms. Meader has a draft of the edits to the AWD by-laws from Superintendent, Sid Hazelton. She said that AWD by-laws have the same force and effect as municipal ordinances.

Vice Chair LaChapelle stated that confusion comes with AWD and LAWPC having the same authority. He asked if LAWPC has the authority to make ordinances, and Ms. Meader replied yes. He asked if LAWPC could make ordinances in Auburn or in other towns. Ms. Meader replied that AWD never adopted ordinances.

Commissioner Bilodeau brought up ordinances adopted by the City of Auburn in the 1970's, and said that at the time those ordinances were sufficient for AWD, so AWD never adopted its own ordinances. He said that AWD will want other towns in the watershed to adopt City of Auburn ordinances to protect the lake.

Vice Chair LaChapelle asked if other watershed towns don't adopt City of Auburn ordinances, does LAWPC have the authority to enforce those rules in those towns. The board and attorney consensus was that the answer is yes within the watershed. Commissioner Holmes gave an example of how this has worked between the towns of Sumner and Buckfield. Further discussion of adopting ordinances ensued, including that LAWPC can fight AWD actions. Chair Cyr discussed the importance of understanding the hierarchy of the strictness of ordinances. Commissioner Brenchick stated that she did not get from a prior presentation by the former LAWPC legal counsel that LAWPC can create ordinances. Chair Cyr discussed that former legal counsel may have had a different focus on the text that explains the authority of LAWPC.

Commissioner Holmes brought up if there had been any enforcement by AWD or LAWPC in recent years. Chair Cyr stated that LAWPC enforces AWD by-laws because of the Interlocal Agreement. He said the agreement led to no one entity taking unilateral action (be it AWD, City of Auburn, City of Lewiston, etc.), where the LAWPC board is made up of representatives from multiple entities who vote on actions, including enforcement.

Commissioner Holbrook asked how LAWPC will keep up with the timeline of all the local changes going on and being proposed in the City of Auburn. He expressed concern that LAWPC will end up behind on local changes due to infrequent meetings. His question was addressed by Ms. Meader. She responded saying that she will have to act as things come up. Commissioner Holmes stated that even if the City of Auburn adopts rules, LAWPC could adopt stricter rules and those would apply. He also stated LAWPC has to decide if it favors or opposes local changes, and then act.

Agenda Item 6c: Discussion of possible additional LAWPC action regarding Letter of Demand dated March 31, 2022

Chair Cyr asked the board if they had questions specific to the Letter of Demand, and members replied yes.

Agenda Item 6ci: Possible Executive Session pursuant to Maine 1 M.S.R.A §405 6(e) regarding consultation between the LAWPC Board and its attorney concerning its legal rights and duties

Chair Cyr asked for a motion to enter Executive Session.

Vote-1 On a motion by Vice Chair LaChapelle and seconded by Commissioner Bilodeau to go into Executive Session in accordance with Maine 1 M.S.R.A §405 6(e).

Passed 8-0

Executive Session began at 4:17pm.

The meeting resumed at 5:45pm.

Chair Cyr brought up the topic of action in response to the Letter of Demand dated March 31, 2022.

Commissioner Holmes made a motion to respond to the Letter of Demand saying that LAWPC will be peer reviewing all available data to understand if LAWPC needs an additional study at this time. Chair Cyr asked Commissioner Parrish if the wording of peer review was correct. Commissioner Parrish said to specify what exactly the study would encompass in the motion, and asked if it would include the whole watershed. Commissioner Holmes specified that it would focus on all availability data on the Gracelawn property. Commissioner Bilodeau seconded the motion. Chair Cyr restated that the motion is to engage experts in a peer review of the available data within the watershed to include the most recent study by the City of Auburn as well as additional studies pertinent to the watershed and the parcel on Gracelawn that was just recently rezoned. The motion was opened for discussion.

The board discussed reports and data that could help inform members about the Gracelawn property zoning changes. Chair Cyr asked Commissioner Parrish to pull together data and reports with Erica Kidd; both agreed to work on this. Commissioner Holbrook asked what the timeline is for Commissioner Parrish and Ms. Kidd to gather information. Commissioner Holmes suggested two weeks. The board discussed Scott Williams of Lake Stewards of Maine as an expert reviewer. Commissioner Parrish agreed to reach out to experts in the field and will report out when this is done, which may be longer than two weeks.

Commissioner Dubé asked, if while the data review is being worked on, will LAWPC be making a recommendation to the City of Auburn to give LAWPC time to do its own review without taking further actions. Chair Cyr said that is a question for a subsequent motion.

Commissioner Dubé asked if LAWPC needs to hire or pay or contract with experts in the field for peer review. Board members discussed how this could be done.

Vote-2 On a motion by Commissioner Holmes and seconded by Commissioner Bilodeau to respond to the Letter of Demand stating that LAWPC will engage experts in a peer review of the available data within the watershed to include the most recent study by the City of Auburn as well as additional studies pertinent to the watershed and the parcel on Gracelawn that was just recently rezoned.

Passed 8-0

Commissioner Dubé made a motion for LAWPC to recommend to the City of Auburn that there be no new development in the watershed, or as to parcels recently in the watershed, pursuant to changes made to zoning in ordinances within the past 6 months.

Chair Cyr asked for clarification. He asked if the recommendation is to City of Auburn or AWD. Commissioner Dubé responded both. Chair Cyr clarified that the motion is that LAWPC is recommending to the City of Auburn that there be no new development beyond what would have been allowed up to 60 days ago within the watershed, and additionally LAWPC is asking the City of Auburn to postpone any development on parcels recently taken out of the watershed. Commissioner Dubé adopted Chair Cyr's clarification as a friendly amendment to his motion, while keeping AWD in the motion. Vice Chair LaChapelle seconded the motion. It then went to discussion.

Commissioner Holbrook asked how that information would be communicated. Ms. Meader stated she would be writing a letter.

Commissioner Bilodeau stated that he would not vote in favor of the motion because the sand pits have been studied, that 40-60% of the stormwater issues with the sand pits will be mitigated with residential development in that area, that there a ground monitoring wells that have tested the groundwater and it's moving away from the lake, and there's a direct cost to City of Auburn taxpayers.

Commissioner Holmes asked if the City of Auburn would be in jeopardy if they don't issue a permit to build in an area that was approved for such use by ordinance. Ms. Meader replied yes. She stated that the City of Auburn would have to put a moratorium on itself if it had approved changes but then did not want them carried out.

The board discussed that the motion on the table was not threatening legal action or giving legal advice. Vice Chair LaChapelle moved the question.

Vote-3 On a motion by Commissioner Dubé and seconded by Vice Chair LaChapelle for LAWPC to recommend to the City of Auburn and AWD that there be no new development beyond what would have been allowed in the Lake Auburn watershed up to 60 days ago, and that LAWPC ask the City of Auburn to postpone any development on property that was recently taken out of the watershed.

Failed 4-4

Vice Chair LaChapelle moved to adjourn the meeting and then removed the motion from the floor.

Commissioner Dubé made a motion to recommend to the City of Auburn and AWD that there be no new development on the basis of any zoning ordinance changes made within the last 60 days, until LAWPC can conclude a study. He asked for friendly amendments. Commissioner Bilodeau offered a friendly amendment to include a LAWPC review of permitting data. Chair Cyr offered a friendly amendment to ask the City of Auburn to wait 60-90 days so that LAWPC can complete its review. Commissioner Dubé proposed 90 days for a review. Commissioner Holbrook seconded the motion.

Vote-4 On a motion by Commissioner Dubé and seconded by Commissioner Holbrook for LAWPC to recommend to the City of Auburn and AWD that there be no new development on the basis of any zoning ordinance changes made within the last 60 days for a period of 90 days, so that LAWPC may review pertinent studies and permitting data.

Passed 5-1

Ms. Meader wanted to go on record that she retracts her previous statement that LAWPC can create and adopt ordinances. Only AWD can do that. LAWPC has the authority to make recommendations to AWD and to take legal action. LAWPC can't adopt by-laws.

Discussion by board members of next meeting date. Commissioner Bilodeau wanted a next meeting date of May 16, 2022. Chair Cyr said he will discuss a next meeting date with Vice Chair LaChapelle and requested agenda items from board members. He said he will check the AVCOG meeting room availability with Commissioner Landry.

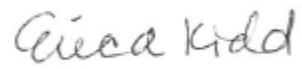
Ms. Meader asked the board about review of the letter she will draft to the City of Auburn and AWD. The board agreed to review the letter.

Vote-5 On a motion by Commissioner Parrish and seconded by Commissioner Bilodeau to adjourn the meeting.

Passed 6-0

The meeting adjourned at 6:21pm.

A true record, attest;

A handwritten signature in cursive script that reads "Erica Kidd".

Erica Kidd
Watershed Manager