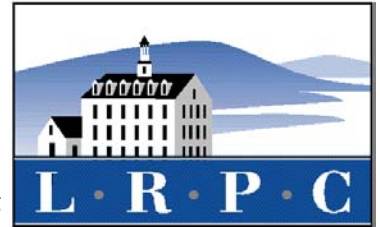


LAKES REGION PLANNING COMMISSION

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MINUTES
LRPC COMMISSION MEETING
 Moultonborough Public Safety Building
 Moultonborough, NH
 May 11, 2009

PRESIDING: Robert Snelling, Chairman **CALL TO ORDER:** 6:00 PM

QUORUM: Yes **COMMUNITIES PRESENT:** 22

MEMBERS PRESENT:

Margaret LaBerge, Alexandria
 Thomas Hoopes, Alton
 John Cotton, Andover
 Steve Favorite, Bristol
 Maureen Criasia, Center Harbor
 Anne Cunningham, Freedom
 Richard Wait, Gilford
 Robert Snelling, Holderness
 Bruce Whitmore, Holderness
 William Bayard, Meredith
 Herbert Vadney, Meredith
 Herb Farnham, Moultonborough
 Barbara Perry, Moultonborough
 Wayne Crowley, Northfield
 Patricia Jones, Ossipee
 Robert Butcher, Sandwich
 Tom Peters, Tamworth
 Dan Duffy, Tuftonboro

OTHERS PRESENT: Brandon Kernen, Christine Bowman, and Steve Roy, New Hampshire Department of Environmental Services; Bill McCann and Susan Roman, HB 1353 Subcommittee; Mason Westfall, New Hampshire Association of Conservation Commissions; David Wunsch, State Geologist, Joint Licensing Board; *Belmont* – Ginger Wells-Kay; *Bristol* – R.M. Campbell; *Chocorua* – Cimbria Badenhansen; *Freedom* – John Shipman; *Gilmanton* – Brenda Sens, Nanci Mitchell; *Holderness* – Todd Elgin; *Laconia* – David Winnsch, Dean Anson; *Madison* – Noreen Downs; *Meredith* – Sande Schmidt, John Hodsdon; *Moultonborough* – Peter Jensen, Cristina Ashjian, Hollis Austin, Bob Clark; Nancy Wright, Enid Holmes, Eric Taussil, Russell Nolin, Betsey Paper, Paul Schmidt, Marie Samaha; *Ossipee* – Roger Ler Kuile, Jean Hansen; *Plymouth* – Jack Scarborough; *Sandwich* – Helen Gingras; Susan Wiley, Patty Heard, Nancy Pope; *Tuftonboro* – Fran Laase, Michael Phelps; *Webster* – Susan

Romas. Kimon Koulet, Michael Iazard, and Marie Gelinias, LRPC; and other interested parties.

1 Welcome and Introduction

Chairman Robert Snelling called the meeting to order at approximately 6:00 p.m. and welcomed all members. He asked for a motion for those present to constitute a quorum for the purpose of conducting business, the motion was unanimously approved. *M/S/P Hoopes/Waite*

2 LRPC FY 2010 Budget

Chairman Robert Snelling said the finance subcommittee and the executive board reviewed the proposed 2010 budget. He asked if there were any questions or comments to the budget. Hearing none, a motion to approve the FY10 LRPC budget was unanimously approved. *M/S/P Waite/Hoopes*

3. Minutes of March 23, 2009 Commission Meeting

Chairman Robert Snelling asked if there were any corrections to the minutes of the March 23, 2009 meeting minutes. There being none, a motion to approve the minutes was unanimously approved. *M/S/P Whitmore/Perry*

4. 2009 Lakes Region Transportation Improvement Program (TIP)

Chairman Robert Snelling reported many road projects that were originally in the TIP Ten Year Plan were pulled out by the State of New Hampshire because of a lack of funds. Currently there are seven approved projects in the Ten Year Plan. The selection criteria were reviewed and applied to projects eliminated by the state so that, if economic stimulus funds become available, there is the potential for additional projects to be placed on the priority list. R. Snelling asked for questions or comments on the TIP plan. A motion to approve the 2009 Lakes Region TIP as submitted was approved. *M/S/P LaBerge/Whitmore*

5. LRPC Annual Meeting

K. Koulet noted that the LRPC annual meeting will be held on Monday, June 22, at 6 PM at a location to be determined. He also announced that Senator Jeanne Shaheen's office had recently notified him that two LRPC Brownfields applications were approved.

6. The NH Legislature's Groundwater Commission: What Role should Your Community have Regulating Large Groundwater Withdrawals?

Chairman Robert Snelling introduced Bill McCann, member of the Groundwater Commission and HB53 Committee. B. McCann provided introductory remarks about the purpose and duties of the Groundwater Commission and the HB1353 Subcommittee. He explained that the commission is conducting regional meetings to hear the public's ideas about how groundwater should be managed in New Hampshire, and what the role of municipalities should be in regulating groundwater. He explained that the Groundwater Commission wants to understand why people have the opinion they do when they provide their recommendations.

7. Overview of NH Groundwater Law

Brandon Kernen, Hydrology and Conservation Program, Drinking Water and Groundwater Bureau delivered a PowerPoint presentation on laws related to groundwater withdrawals in New Hampshire and the current regulatory process. He noted that water is a shared resource and land owners have a right to reasonable use of the water on their property, but they do not own the groundwater beneath their land. Water use by a land owner is controlled by common law and statutory law that protect the public's interests in water resources and other water users. B. Kernen explained the differences between common law and statutory law. There are two standards to statutory groundwater withdrawal permitting requirements. No statutory requirements pertain to groundwater withdrawals developed before August 1988 or non potable groundwater uses less than 57,600 gallons per day. Substantial statutory requirements related to groundwater withdrawals were developed after July 1998, when exceed 57,600 gallons per day. B. Kernen said some municipalities have adopted local ordinances to regulate groundwater withdrawals, but they cannot regulate large groundwater withdrawals (more than 57,600 gallons per day). The law is still unclear if municipalities can regulate small groundwater withdrawals. Two hearings and public comment periods are required by law in New Hampshire. Municipalities have intervener status and a right to meet with the state to discuss a project. All comments submitted to the state must be addressed when the state makes a permitting decision.

8. Public Exchange on Groundwater

Following the presentation, the audience raised many questions, some of which are as follows:

- What is HB314? An act relative to the assessment of certain costs associated with proposed large groundwater withdrawals from wells. This bill permits a municipality in which a well associated with a proposed large groundwater withdrawal is located to assess the applicant certain costs.
- An attendee asked how the 57,600 gallons per day was derived as a threshold for requiring a large groundwater withdrawal permit? Brandon Kernen responded there was an existing regulation in 1998 separating large community water systems from small community water systems and that the cut-off between the two towns was 40 gallons per day which translates to 57,600 gallons per day.
- John Cotton, Andover, asked for clarification of B. Kernen's comment during the presentation that the court has yet to comment on whether groundwater is held in the public trust and whether he was referring to the NH Supreme Court. Bill McCann responded yes, that was the court that was being referred to and he is familiar with the court decision. Although the state wrote an argument that groundwater is covered under the public trust doctrine, the court did not formally respond to the argument. J. Cotton then asked if the assumption would be that groundwater is in the public trust in New Hampshire. B. McCann responded that although it hasn't been ruled that way in New Hampshire, he thinks that most attorneys would likely say the public trust

doctrine does apply to groundwater in New Hampshire until the court says otherwise.

- Someone asked for an explanation of HB-1353 and the role of the Groundwater Commission. Bill McCann explained the history and status of HB-1353 and that the Groundwater Commission is examining the role of municipalities in the groundwater withdrawal permitting process.
- A question was asked about how concerned the people of Wolfeboro should be with the amount of water C.G. Roxane is withdrawing? Brandon Kernen responded that their permit allows for withdrawals in the low 200,000 gallons per day, but they are currently withdrawing in the low 100,000 gallons per day on average. He stated that the DES has environmental monitoring and water use data and, while he knows that there is a lot of concern about the withdrawal, it is a very ideal withdrawal given the amount of undeveloped land secured around the withdrawal site and lack of competing water users in the area. He explained that the withdrawal could be an issue for the wetlands located near the withdrawal, but these are being heavily monitored. He said that relative to private water users, the withdrawal is a non-issue.
- Dick Waitt, Gilford, asked how ski areas, which use water for snowmaking purposes, are handled in the permitting process. Bill McCann and Brandon Kernen jointly responded that most ski areas use surface water or dug ponds and not groundwater sources. Brandon Kernen stated he is familiar with one ski area that uses groundwater sources, but they predate the statute.
- Tom Hoopes, Alton, stated they would not want to see any other permitting agency other than NHDES. He stated that communities have ample time and opportunities for input and there is a free flow of information. He would not want to see towns be able to permit because it would create an inequitable system. He expressed that there should be multiple tiers or classes of withdrawals and that when a small withdrawal wants to transition to a large withdrawal, even if it is grandfathered withdrawal, once a certain threshold is reached some level of permitting and testing should be required, especially since there was no process in place when the withdrawal was initiated. He is concerned there is no regulation of withdrawals that predate the statute and that as these withdrawals increase, there should be some degree of control. He also stated since the state does the burden of permitting, there should be an associated fee, a portion going to the state and a portion going to the municipality in which the withdrawal is located. He expressed that a fee should apply to all entities, whether they are a municipality or a private corporation. Mason Westfall, Bristol, reiterated that one of the questions that needs to be addressed is whether people think the state or municipalities should regulate groundwater withdrawals.
- One person stated they did not think each municipality should have its own permit system. Another stated that if the state has the resources to guarantee the quality of water from a private well, the towns should not have any regulations; if not, the state should be encouraging municipalities to work with them.
- J. Cotton, Andover, said information about a town's groundwater resources could be incorporated in a master plan or zoning ordinances and, in order for

this to be effective, there needs to be more information available about the resources if the state wants better municipal input. In addition, he asked what is being done through this process to improve knowledge about aquifers in NH. Bill McCann cited the water resources primer, which has been made available to local entities. The question was then directed to David Wunsch who responded that New Hampshire is involved in the federal mapping program to map surficial deposits and that approximately 40% of the state is completed. He said the concentration has been in the southern part of the state with the highest population density and the state is working on collecting better data sets which would be useful tools for towns.

- M. LaBerge, Alexandria, asked how a town could make a statement in their master plan or in their subdivision regulations that speaks to an impact that may be caused by an event in another town. Bill McCann responded that there can be a provision in ordinances for regional impacts and that although this is not necessarily a solution but a step toward communities working together. He said the first step may be through regional planning commissions.
- Anne Cunningham, Freedom, said that based on the information in the presentation, it's clear that municipalities cannot regulate large groundwater withdrawals and she is concerned that putting something in place through the master plan may be an illusion. She would prefer it to be clear on whether towns can influence withdrawals. Bill McCann responded that under the current statute, municipalities are preempted from regulating large groundwater withdrawals; however, towns have the opportunity to review the permit application and provide input to the New Department of Environmental Services. Susan Roman cited a case in Peterborough where an existing bottled water operation increased their groundwater withdrawal which in turn caused traffic increase. She explained that town zoning did not allow for a commercial business in the area and that the State Supreme Court upheld Peterborough's imposed limitations on trucking at the site.
- An attendee asked if there have been any large groundwater withdrawals in the state that negatively impacted wetlands that have successfully been mitigated? Brandon Kernan responded that the process currently in place allows the detection of a problem before irreversible damage is done.

Other Business

There being no other business, the meeting adjourned at approximately 8:30 PM.