

Minutes
Nottingham Selectmen's Meeting
July 2, 2012

6:30 PM Chair Bonser opened the meeting and asked all those present to stand for the Pledge of Allegiance.

Members Present: Mary Bonser and Mark Carpenter. Hal Rafter - ABSENT

Others: Charles A. Brown – Town Administrator, Dawn Wirkkala – Secretary, John Quinn, Judy Doughty, Chris Mills, Bill Nettishen, Dee Ann Decker, John Terninko, Therese Thompson, Romeo Danais, Liz Kotowski, Ed Kotowski, Pat Farrington, John Decker, Matthew Eaton, Seonaid Eaton, Pamela Kelly, Representative John Reagan, Representative Kyle Tasker, Howard Pearl, Ted Diers, and others

NON-PUBLIC SESSION: The Board entered non-public under RSA 91-A:3 II(d).

6:31 PM Motion: Motion by Chair Bonser, second by Mr. Carpenter to enter non-public under RSA 91-A:3 II(d).

Roll Call Vote: Bonser – Yea, Carpenter – Yea, 2-0 in favor.

6:42 PM Motion: Motion by Chair Bonser, second by Mr. Carpenter to leave non-public session and return to public session.

Vote: 2 – 0 in favor.

Motion: Motion by Chair Bonser, second by Mr. Carpenter to seal the non-public minutes.

Roll Call Vote: Bonser – Yea, Carpenter – Yea. 2-0 in favor.

Ledge Farm Road/Rocky Hill Intersection - Chair Bonser asked about the Ledge Farm Road/Rocky Hill intersection concern. No information was received.

Rhymes/Fernald Propane: Mr. Carpenter stated the reason the Fire Chief is not attending Planning Board a meeting is because he is waiting for a plan. Discussion can be held once a plan is received. The Fire Chief isn't attending out of disrespect, but there is nothing to say at this time. A fire safety engineer must be hired, but no actions can be taken until a decision is made.

OUTSTANDING MINUTES: Postponed.

MANIFEST SIGNATURE:

Motion: Motion by Mr. Carpenter, second by Chair Bonser to approve the 7/2/12 to 7/9/12 manifest.

Vote: 2 – 0 in favor.

APPOINTMENTS: 7:00 pm: Representatives John Reagan and Kyle Tasker, 7:30 pm: Howard Pearl – NH Senate candidate, 7:45 pm: John Terninko and Romeo Danais

7:00 pm: Representative Reagan and Representative Tasker review of Redistricting, Pawtuckaway Draw Down and Statute Changes: Representative Reagan stated redistricting complied with a rigid set of parameters with federal election laws. NH has a problem with the federal deviation requirements due to the high number of state Representatives; more than 2 times than other states. Having one rep per town didn't allow for considered equal representation for each town based on population numbers. Mr. Carpenter stated he was disappointed and asked why the Representatives did not answer the questions and concerns the town had regarding the redistricting issue, which was emailed to them multiple times. The Representatives indicated they would have had limited answers regarding the process. Representative Tasker stated he would not have had answers about the thinking process of the Attorney Generals. Mr. Carpenter stated he was concerned with a lack of answers because the selectmen needed to make a decision to join the redistricting lawsuit or to not join in; even an answer indicating no comment would be preferred.

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Both Selectmen asked the Representatives, despite busy schedules, to provide the potential state level assistance when needed.

Chair Bonser reviewed with the Representatives the hearing NH DES had regarding the draw down at Pawtuckaway Lake, indicating limited information was distributed or received regarding the plan, limited answers were provided at the meeting and there was concern about ulterior motives. Mr. Carpenter stated the proposal is in regards to a Lamprey River pilot project with a change in the draw down amounts and a proposed two draw downs versus the previous one.

Chair Bonser stated there does not appear to be sufficient reasons to use the draw down levels proposed, many reasons for opposition, and not many options to review why they are making the choices they are making. Chair Bonser stated information regarding the draw down would be emailed to the Representatives.

Chair Bonser reviewed the activities taking place regarding USA Springs and the Selectboard would like to recommend a legislative change to the language in the statute. Representative Tasker indicated he proposed language before, it was not approved, but a request for change can be submitted again. Both Representatives reviewed that there are very specific times and methods for proposing language changes to statutes. The state lawyers look for language changes that are already in effect, specific word changes, or a very clear and specific understanding of the requested proposed change versus only a concept. Having specific changes is best, but they will still be reviewed. The Selectmen recommended the following specific changes to RSA 485-C:20 I with the removal of "*other than groundwater withdrawals*." It was stated the biggest opposition of the change could be from NH DES and corporations. The Representatives indicated changes would be reviewed by the House Environment and Agriculture Committee for recommended approval and members of the committee should be contacted for bill support in the fall.

7:30 pm: Howard Pearl Senate Candidate: Mr. Pearl introduced himself and reviewed his background and why he would be the best candidate for NH State Senate. Additional information regarding Mr. Pearl can be found at www.howardpearlnhsenate.com.

General discussion of Mr. Pearl and his philosophies and proposed policies took place.

7:45 pm: Mr. Terninko and Mr. Danais USA Springs bid: Mr. Danais reviewed their progress for placing a bid for a private purchase of the USA Springs property. The submitted written bids will be opened and reviewed by the appointed attorney on July 13, 2012 and if any are found acceptable the attorney will move forward in the bid process; verbal bids will be allowed on July 20, 2012. Additional investors have been sought for potential support in placing a bid, but many do not have readily available cash. Having two fronts for potential proposals, one for conservation and the second being investment, allows for a portion of the land to be in conservation and another for potential main route commercial development. Mr. Danais stated it may be possible to form a relationship with Roswell, the holders of the mortgage, with the idea of working together for potential purchase for conservation and investment purposes. An appointment has been requested with the Roswell attorney, a Roswell owner, Jim Hadley Director of Neighborhood Guardians, a Nottingham attorney, and a conservation group to provide information about the objection to any proposed plan for ground water withdrawal, to include lack of permits or the possible need for new special considerations, in addition to proposed solutions. Mr. Terninko stated he is seeking additional individuals to invest, however gathering the money is a problem and individuals who have invested in this type of project before are being sought.

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Mr. Danais presented the proposal for potential tax payment delay and use of tax amount due as a "credit bid" in an attempt to increase the bid amount. Mr. Danais read the proposal into the record, which can be reviewed at the Town Office. Chair Bonser stated this proposal will be given to the town attorney for review of the legality of possible town action. Mr. Carpenter stated he wants to have a discussion with the attorney to establish a way that the town can support the bid action by the citizen group. The decision was made to try and get an answer regarding the proposal by July 12th.

Mr. Carpenter reviewed information concerning the Nottingham Zoning Board May 2001 special exception given to USA Springs to operate, dependant on the original testing showing the planned withdrawal does not affect local wells; however, new and additional information indicates it does show an impact. It was stated the Local Government Center can be contacted to establish the removal of vesting of the special exception. Original review of this issue pointed out two specific areas of concern: 1. The special exception being available only until Nov 30, 2011, however there is nothing to explain what happens after that date, and 2. exception to vesting have been upheld by NH Supreme Court only under health and safety regulations. LGC will be contacted to clarify these points for possible further action. Mr. Danais stated this point would be objected to by USA Springs and purchase by our group would stop all action.

Mr. Mills stated the 2010 Water Article ordinance includes language preventing large ground water withdrawal and has language to establish that it is retroactive. Chair Bonser stated NH laws do not allow for actions to be retroactive. Mr. Mills stated there is the chance the special exception would not have been given if information had been provided regarding the affect of the withdrawal.

Mr. Nettishen asked how much money the group had for funding. Mr. Danais stated \$200,000.00 with a current maximum bid of \$2 million. Mr. Danais stated donations should be pledged by July 12, 2012. Mr. Nettishen asked if the intent is to move forward with a bid and not have a water bottling plant. Mr. Carpenter and Mr. Danais stated that is the case for all parties involved. Mr. Danais stated it is unknown what the actual intent of Roswell is; if they are using the permits as an asset in seeking bidders. However, if it is the intent of a bidder to have a water bottling plant there are other, cheaper, ones across the country. Mr. Nettishen asked if the Selectmen have voted to support and become involved in the bid process. Chair Bonser stated while the current Selectboard is supportive of the bid actions, no actual actions have been committed to, but the current Selectboard cannot bind the hands of a future boards, and has not voted. Mr. Nettishen stated the board is making consideration about supporting the bid, including a possible commitment for potential financial support. The Selectmen stated while they are supportive of the actions of a private bid, they are considering all avenues of support prior to actual support, if even able to do so, and without binding the hands of the general public. Mr. Brown stated the BOS must be careful to make a vote, with all available information, making sure action can be taken legally.

Judy Doughty asked if the Selectmen have the power to commit the tax funds of the delinquent taxes or if a town meeting vote is required. Chair Bonser stated that is part of the unknown at this time and reason for the review.

GENERAL BUSINESS/REVIEW:

NHDES Drawdown: Mr. Ted Diers, NH Department of Environmental Services Watershed Management Bureau Administrator, was introduced. Many of the attendees requested answers to their questions and comments from Mr. Diers about the proposed NH DES 2012 summer and winter draw down of Pawtuckaway Lake levels. Judy Doughty, Bill Nettishen, Dee Ann Decker, Therese

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Thompson, Liz Kotowski, Ed Kotowski, Pat Farrington, and John Decker, and Pamela Kelly expressed their concern and asked questions.

Chair Bonser and Mr. Carpenter stated they had concerns about the hearing that we held and the lack of information provided by NH DES about why there was a change in the draw down process, and NH DES's unwillingness to answer questions at the hearing the previous week. Also, the lack of attention, by DES to potential adverse consequences to Pawtuckaway Lake and with infinitely more consideration given to the Lamprey River, the possible use of the water by the Town of Durham, the appearance of dismissing the concerns of Nottingham and NH DES's failure to provide any direct notification to the Town of Nottingham of its intention to make critical changes in the draw down levels and frequency of the draw downs at Pawtuckaway Lake.

Mr. Diers provided the following answers to many of the questions asked by those in attendance. Mr. Diers stated the previous and current questions and concerns submitted would be addressed and answered in written format in the next couple of weeks. The context of water quality standards is to protect the water quality and surface water, which includes "designated uses" such as swimming, fishing, and aquatic life; then "designated water quality" criteria such as oxygen, toxins and nutrients; and then "anti degradation" which essentially mean you can not get too close to impairing water quality and aquatic life. Aquatic life in rivers needs to be at a high enough quality and high enough water level for things to survive. Water quality is already established for things living in the water. However, it is less understood about how much water is needed to support those things. In stream flow has been studied for many years and the early studies failed because it looked primarily at only one aspect, how low is low. It now looks at three areas of in stream flow, to include magnitude of the flow - how low is low; frequency of the flow - how frequent is it that low; and duration of the flow - how long does it stay that low. There is the process of determining the level in a natural environment and when humans are changing the flow. The legislature established there should be a study for the flow covering three components: regular users, dam owners and between the two conservation plans, which include regulation with continual improvement and having a water use plan when water is low. Different levels of water height and flow require different sets of actions. Dams influence water flow system by changing the hydrology of the system. With all the studies, a concept was established that would release a small amount of water to simulate a rain event in order to maintain the established necessary quality and conditions of a good water flow. There are approximately six water flow seasons, distinguishing the differences between spring and summer and even winter flows. There is the intent to have a summer draw down and then a lesser winter draw down. The issue currently is depending on the time of the year, to allow for the humans to use the water but assisting the animals and other critters who are not getting the water they need.

Mr. Diers stated the entire watershed must be managed, in a sustainable way, including the draw downs. Mr. Diers apologized for the lack of response; there have been some problems with public notification and explanation, however the project has been ongoing, including responses to questions and comments. Chair Bonser stated there is concern about questions and concerns submitted having a lack of answer, or not receiving answers, from NH DES prior to a decision about the draw down being made. Mr. Carpenter stated there is unease about answers to the questions and concerns being provided at the same time as the decision about the draw down from NH DES without being able to review and respond to those answers.

Mr. Diers stated that is the established hearing process, however a response to comments will be provided prior to the report recommendation. Additional comments regarding the lake level

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investigation should still be submitted but are on a separate tract and will receive responses at a later date. The response to comments will be released; a meeting of the advisory committee scheduled to review responses to the comments, and another meeting to review the responses, if requested.

Mr. Carpenter stated while the project is considered a Lamprey River project, there must be significant consideration regarding Nottingham in the process. Chair Bonser stated she is concerned about the lack of communication from NH DES to the Town of Nottingham, especially given the importance of Pawtuckaway in the project. Mr. Diers stated he apologizes for the lack of communication, and while oversight of project was not under his direction at the time it started, now that it is, he is taking steps to make sure Nottingham is included in the process before decisions are made. While Nottingham may not like the answer, it will be included in the process.

Mr. Diers stated Durham is a direct permittee with DES and some of the water use issues were worked out with Durham. Regulations required more direct working contact with Durham because of the permit process, including working with the Attorney General. The needs of Durham are not considered when considering the needs of a draw down. When water is released from Pawtuckaway, Durham will be off river withdrawal for 15 days; no water from Pawtuckaway is going to Durham. It has been a significant challenge getting Durham off the river; water is for the critters and not the people. Durham utilizes water from the river only when the water level is considered high enough for them to collect a withdrawal; their primary sources are wells and reserve.

Mr. Diers stated Durham water use drops when there are other water users and uses in other communities. Chair Bonser stated there has been discussion about a winter draw down to coincide with the increase in Durham water, to support the school. Mr. Diers stated that is not the case.

A questions and answer session took place with those in attendance.

Mr. Diers stated there are summer and winter droughts, and the winter draw down will need to be a little larger and to get the approximate six inches of needed water out in the winter. NH DES must balance the needs of the interest of all and the data from the winter indicate there are periods where the levels fall lower than the normal levels. Some statistical information has been shown about the need for the summer and the same analogies are applied for the winter draw down.

A letter was read into the record from Mr. Tom Duffy regarding the PLIA supportive actions on Pawtuckaway Lake, to maintain positive ecological levels, requesting that NH DES reconsider their decision about draw downs and it's potential consequences in other areas even though PLIA may support in-stream flow issues. A copy of the letter can be reviewed at the town offices. Mr. Diers stated he would look into the issues presented to provide responses on things he did not have immediate answers to.

Mr. Diers stated he doesn't know why the NH DES Commissioner hasn't issued a declaration regarding the Souhegan Water Management Plan, but he may do so at the same time of the Lamprey In-stream Flow Plan. Mr. Diers stated replenishment of other town wells down stream would take place in the spring and has nothing to do with keeping the lake at a higher level in the winter, but the specifics will be reviewed for an answer. A request has been submitted for hard limit releases and it will be responded to with the written response to comments.

Mr. Diers stated it is his plan to reconvene the technical advisory committee. Mr. Diers stated once grant money is donated it is out of the donator's hands and they don't control or push the results in one area or towards a specific result, and it became a process of looking at all aspects of the river. The models used for this process is the same model used in many studies across the United States.

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Mr. Diers stated he doesn't know about the specifics of the original grant, and based on his history of working with grants, there is typically a specific purpose for the money, then a subsequent action/work plan. Chair Bonser asked to see the work plan and Mr. Diers agreed to provide it.

Ms. Kotowski asked when the Lamprey River went from being a secondary emergency source to a primary source of drinking water for Durham; why is such an important water source being allowed as a primary source to such a large and growing community and would the river and Great Bay be in better shape without their withdrawal. Mr. Diers stated the problems in Great Bay generally have little to do with fresh water coming from, and in fact the flow from fresh water ground flows causes more nitrogen problems. Mr. Diers stated no part of the In-stream flow plan has been implemented; the project hasn't started and no report is available.

Chair Bonser stated to Mr. Diers many times throughout the meeting that she is very strongly concerned the information about the changes to Pawtuckaway Lake have been received too late for Nottingham to take any action and a decision by NH DES has already been made regarding the draw down. The lack of formal notice to Nottingham regarding the potential changes to the lake is a point of remiss and actions such as this should never have been considered without actual notice the town. Mr. Diers stated he is also concerned and will do his best to take appropriate actions regarding the concerns now, and will continue to let the town know what is going on.

Ms. Thomson clarified that information regarding the Lamprey River Water Management Advisory Committee project has been given to the then current Boards of Selectmen over the last five to six years. USA Springs and other large water users were notified they would need a water conservation plan during years of drought with the Lamprey River plan. It was in February 2011 that Pawtuckaway was brought into the conversation at meetings, where previous discussion has been about only the river. The committee was tasked to look at a specific designated area of the river. The hearing held the previous week was regarding the winter draw down. Ms. Thomson stated she asked at that time if there would be a hearing for the summer drawdown and was told there may not be. NH DES has completed a significant amount of work, but is limited to working in the area's they are tasked to review, per the NH legislature. Ms. Thomson stated based on what she has learned that it may not be best to lower the lake by seven feet every year, but is concerned with leaving too many alewife in the lake, giving thought to both pros and cons for both options. Ms. Thomson stated Mr. Diers is great to come and provide information and take the criticism, and there are many great people at DES who have worked very hard.

Mr. Diers stated there is a long standing agreement, since 2001, for Durham to withdraw water from Lamprey River. Durham will be prevented from withdrawing water from the river at least 15 days prior to the planned summer release. Durham is required to have an active water conservation plan, and will not be able to start pulling water from the river again until the level is above a certain height and will not be able to, unless the river reaches that level. DES now has more control over when Durham pulls water from the river. The amount of water determined for the draw down is based on knowledgeable hydrologist staff and existing mathematical experience, it is possible to know what actions are needed to get the amount of water needed; actions will be more on the conservative side versus letting too much go. The winter lake investigation is different than years past, and must hold a hearing to review the changes.

Mr. Diers stated the maximum amount of water than can be drawn down in the summer from Pawtuckaway is six inches, based on mathematics, and that would only be if there was no rain during approximately from May to October season. It has never happened, but based on review and there might have been only two or three times when that amount of water would have been

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withdrawn, since the 1960's. Mr. Diers stated concerns about a drought and what levels to remove have been brought forward and the concern about having balance in all areas will be addressed. Mr. Kotowski asked to review the data to run his own calculations.

Mr. Diers stated he has to be concerned for all areas of the lakes and rivers quality, but is not prepared to damage one resource to save another. Despite speculation, additional studies can be completed in all the areas, but coming into the process and study half way through completion is giving reasons for a plan delay. These reason also includes a 10% cut in staff, however, all issues will be reviewed and considered. Because there are so many concerns, he has made the decision to not rush into this process and will request an extension from the legislature, if necessary. There are many other projects taking place throughout the state, including the Lamprey River project that need to be completed, by NH DES staff.

Information regarding the method of calculating the total amount of water needed for a winter draw down was discussed. Discussion took place about the weight, amount, and melting times if there were more or less winter ice on the lake and what the potential damage could be if there was more ice. Mr. Diers stated, while he does not have a specific answer, previous studies indicate there may be more ice, but the from a melting perspective it may melt a little later, but will not cause any additional damage and asked that the question be submitted to the department.

Mr. Nettishen stated he is concerned about the quality for the remaining animals and conditions between the north and south ends of the lake if the draw down goes forward as planned, because it may not have been considered.

Mr. Kotowski asked if the lake would be filled later in the season because there was less water removed during the winter. Mr. Diers stated the lake may start at a higher level in the spring; it is a great question and will have a more specific answer available later.

The purpose of the program is to understand how this can be done, and it's hard with the perception of one to give up something to give it to someone else. Mr. Diers stated he will make sure public input is allowed and considered and while Nottingham may not like the answer NH DES comes up with, but the data will be more available and a possible recourse made available.

Mr. Carpenter stated he is most concerned that he hasn't heard anything indicating the change is required, the strategy is not comprehensive: to include the effect on Lamprey River and the critters of Lamprey River but not the cost to Pawtuckaway ecology. While there may be a possible short term benefit to the Lamprey River there may be longer term problems to Pawtuckaway Lake, which will them impact the Lamprey later. Mr. Diers stated there is an assumption the seven foot draw down is good for the lake, but even that amount will be reviewed. Discussion has also taken place about the science in the fact sheet of drawdown versus no drawdown and 5 feet versus 7 feet. There are lakes that have that a current draw down magnitude of five feet, but not many and all areas need to be reviewed to determine the benefits and costs across the board.

Mr. Carpenter stated he is very impressed with the level of knowledge the people from Pawtuckaway Lake have about the lake. Mr. Diers reiterated he isn't in a rush to make a decision about the process and is concerned about making sure the response to the questions and concerns are release prior to making a final decision.

Chair Bonser requested the water withdrawal to Durham be reconsidered.

Both Chair Bonser and Mr. Carpenter thanked Mr. Diers for coming and answering the Town's questions and concerns. Mr. Diers left the meeting.

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Chair Bonser stated she wants to be proactive in regards to the draw down issue and requested that Attorney Mike Donovan be contacted for review of the actions taken by NH DES: review the process NH DES has taken to get to the point of decision regarding the draw down, to include writing a letter drafted to notify NH DES about the objections Nottingham has regarding the draw down and what potential recourses the town might have regarding the actions of NH DES.

Mr. Carpenter stated the Selectmen should wait to see the results before taking action. While he does not object to contacting the attorney, he asked if the LGC can review the information prior to spending money. After consideration Mr. Carpenter agreed Mr. Donovan should be contacted to draft a letter for Nottingham to send to NH DES about their objections and concerns regarding the planned draw down and notice not being received regarding the issue.

Mr. Carpenter stated he also discussed the protected alewise with the representative from Senator Jeanne Shaheen's office with regards to the potential change in habitat with the draw down process and she indicated the Town would be contacted by someone more familiar with the ecological process. Mr. Carpenter asked to review not only the work plan but also the original grant information.

Citizen Letter: Mr. Brown stated he received a letter of concern from a resident about water run off onto his property. After review of the road and culvert it has been determined the culvert has been installed since 1960. Given the significant increase in rain fall this year it may have prompted more of a concern, but given the situation has possibly been occurring for many years he is hesitant for the town to take any action due to liability issues. It was determined Mr. Brown would discuss the issue with the road agent and citizen prior to making any decisions.

LGC Policy Conference: Mr. Brown stated the town received information from LGC regarding their annual Municipal Policy Conference. This is the opportunity for all towns to indicate to the LGC what actions they feel the LGC should focus attention on changing or addressing; allowing for towns to comment on specific concerns. Each town has one vote at the conference and previously Mr. Brown has been the elected voter, but the decision has come from the selectmen, who have reviewed the information and made a decision on what response is needed.

DEPARTMENT REPORTS:

Fire Department: The process continues for hiring two new employees; the one full time employee is doing a good job keeping up with calls and regular duties. The problems with the exterior lights will be addressed with the installation of LED lights, and they will remain on all the time, due to possible safety concerns.

Highway Department: Finish grading will be done by the paving company and paving may start sometime during the week of July 9th. Halls Way and Church Street needed to be re-built. Flutter Street and Mill Pond Road will need some additional work prior to starting the paving.

Police Department: The Chief of Police indicated he is hopeful about having no traffic issues at the State Park over the holiday; there shouldn't be the same issues as in the past. A Northwood officer has been hired for a detail on the 4th of July; Chair Bonser suggested a "Full Lot" sign on Route 156 may help with the parking issue. Mr. Brown stated people were turned away the previous weekend due to high attendance. An increase in tree trimmers has resulted in a higher number of detail officers from other communities.

Recreation Department: Training of the summer staff has been taking place before Summer Camp.

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Town Office: The Town Office phones were not operating on Monday, in addition to the Fire Department having two lines out throughout the weekend. Fairpoint has made some repairs to lines on the poles and the issues appear to be resolved.

SIGNATURE FILE:

| | Signature Item/Subject | From | Signed By |
|----|---|------|-----------|
| 1. | NH Local Government Center Access Authorization/Release | CAB | All |

Mr. Brown stated the letter changes authorized individuals to access staff at the LGC to answer questions or gather information as needed for town, board, and committee tasks, specifically adding the Moderator, the change in administration assistant, and adding the ZBA Vice-Chair. Chair Bonser stated Moderators are under the specific authority of the Attorney General, and that is who should be called versus the LGC. It was stated the policies should be changed to allow Vice Chair's the ability to call and request information from the LGC. Mr. Brown stated the issue isn't a problem at this time.

Motion: Mr. Carpenter motioned to adopt the update to access LGC service as proposed by Mr. Brown dated June 26, 2012. Chair Bonser seconded the motion.

Vote: 2-0 in favor.

ADJOURNMENT: Having no further business,

10:37 PM Motion: Carpenter, second Bonser to adjourn.

Vote: 2-0 in favor.

Respectfully Submitted,

Dawn Wirkkala