

# BEAR LAKE LAKE BOARD

Hearing of Practicability  
09/07/2017 at 6:00 p.m.

## MINUTES

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**CALL TO ORDER:** The meeting was called to order by Kim Arter at 6:00 pm.

**PLEDGE OF ALLEGIANCE TO THE FLAG:**

**ROLL CALL:**

**Present:** Brenda Moore, Kim Arter, Darrell VanFossan and Sam Janson

**Not Present:** John Snider – excused w/notice

**Also:** Consultants from RLS Dr. Jennifer Jermalowicz-Jones and Mike Solomon, Recording Secretary Veronica West and between 25 and 30 area residents.

**MINUTES:** Brenda Moore moved to accept the minutes of August 3, 2017. Sam Janson supported the motion. The motion carried by voice vote. The minutes will be placed on file.

**COMMUNICATION: NONE**

**OLD BUSINESS: NONE**

**NEW BUSINESS:**

- **ITEM 2017-03: ATTORNEY LETTER:** Chair Kim Arter referred to a letter from Attorney Ron Bultje noting that he is changing law firms. The letter requests the Board to determine if they wish to stay with him at his new firm or stay with the Scholten Fant firm and indicates Mr. Bultje understands his representation will continue according to the same terms and rates in effect while he was at Scholten Fant. Brenda Moore and Darrell VanFossan expressed some concern over costs/terms with regard to how long they would remain the same, with Darrell noting he feels anytime the rates/terms change the board should put the job out for new bids. It was also noted that it could be difficult to change attorneys at this point as Mr. Bultje has been involved from the start of the process and changing attorney's at this time could delay moving forward with the process. Brenda Moore moved to continue on with representation from Mr. Ron Bultje at his new firm of Dickenson Wright contingent upon getting confirmation in writing that the original hourly rate, mileage rate will remain the same and also how long those rates will remain in effect. Darrell VanFossan supported the motion. There was some discussion over whether or not it was necessary to have rate/term confirmation in writing, with Darrell VanFossan noting he didn't feel it was an unreasonable request. A roll call vote was taken.  
Voting in Favor of the motion: Darrell VanFossan, Sam Janson, Brenda Moore and Kim Arter  
Voting in Opposition of the motion: None  
Motion Carried.

**OPEN PUBLIC HEARING:**

Chair Kim Arter noted that this public hearing is being held in accordance with Public Act 451 of 1994 Part 309 and that notice of the hearing has been published twice in the Muskegon Chronicle as required and is being held to hear public comment and consider any objections to the feasibility study, economic report and estimate of costs as proposed by Restorative Lake Sciences (RLS) for Bear Lake located in Muskegon County, Michigan. It was also noted that the full feasibility study has been available for public viewing at Laketon Township Hall, The City of North Muskegon and online at the Bear Lake Lake Board (BLLB) page of the Laketon Township website. She added that it is the responsibility of this board to determine the

practicability of this project. Kim Arter introduced Dr. Jennifer Jermalowicz-Jones of RLS. She also informed the public present of the procedure to come forward and make comments by stating their full name and address for the record as well as noting once the public portion of the meeting is closed, there will be no further public comment taken and the board will deliberate and make a determination. The public was informed that the entire meeting will remain open for the public to stay and hear the entire deliberation and determination.

#### **OPEN FLOOR FOR PUBLIC COMMENTS:**

Darrell VanFossan moved to open the floor for public comments. Sam Janson supported the motion. The motion carried by voice vote and the public comment portion opened at 6:21pm

Kim Arter noted there was some written and verbal communication received.

- Secretary Brenda Moore read aloud, in its entirety, a letter received from Colette Cowan of 438 Melody Lane, N. Muskegon, MI. The letter discussed Ms. Cowan's own investigation into the topic of the lake and asking questions of area experts such as Kathy Evans; encouraged the board to look into grant funding to reduce the costs to lakefront residents and property owners; to be aware of other projects, not duplicate their work and possibly "piggy-backing" on said projects if possible; and also to look into alternative treatments for blue-green algae such as hydrogen peroxide to oxygenate the water as it is very inexpensive.
- Kim Arter noted she received a phone call from Elaine Vandenberg of 1617 Mulder Dr, Muskegon, MI. She relayed that Ms. Vandenberg expressed support for this project and is happy to see it moving forward.
- Ross Aiden of 700 Glenwood Ave commended the board on their hard work to address the problems, stated he wants to be part of the generation involved in the solution and has been coming to meetings for years to address the oil seep in Fenner's Ditch. He objected to the local public having to pay for the clean up, noting that oil companies should be responsible for it.
- Justin Wilson of 60 N Bear Lake Rd also commended the board on their work thus far and wants to see a comprehensive team approach taken by using and including all the work and studies of other organizations and projects on Bear Lake to bring down costs. He added the study seems very sample/study heavy and feels more treatment is needed. He also added that the Bear Lake Preservation Association can help with the public education to keep down costs of this project. He also expressed concern regarding blue green algae, how problematic it was this year but that treatment for it doesn't start till year three of the plan when it needs to start now/sooner.
- Kathy Berntson of 12 S Bear Lake Rd stated where she now lives was originally owned by her grandfather and her family has been coming to Bear Lake for 73 years, she is saddened by the current condition of the lake and would be happy to see the study and research that has been done over the years used to help restore the lake now as it must be taken care of as it is a very important natural resource for the area.
- Colette Cowan of 438 Melody Lane stated it was a shame that both this meeting and a meeting on the Zephyr project were both occurring at the same time tonight and is an example of how all projects are not integrating/cooperating together as much as they could be and added she hopes the board will gather the information from the Zephyr project meeting to see if it can be helpful for this project.
- Debra Shields of 154 N Bear Lake Rd commented that she is excited about treatment and the information the consultant has provided and included from other sources and organizations. She noted that in terms of cost lakeshore property owners already pay higher taxes for the same municipal services like parks that she doesn't use, but pays for. She asked that the board consider that when making the determination of how to pay for this project as not just lakefront property owners use the lake.

#### **CLOSE PUBLIC COMMENT:**

Kim Arter asked if there were any further comments as once the floor is closed for public comment the board will

take no further public comment. There were no other comments from the public. Sam Janson moved to close the public comment portion of the meeting. Brenda Moore supported the motion. The motion carried by a voice vote at 6:42 pm.

#### **BOARD DELIBERATION/DETERMINATION:**

Kim Arter re-introduced Dr. Jennifer Jermalowicz-Jones of RLS to give the public present her presentation of the feasibility study that she gave at the August 3, 2017 meeting as half the group present indicated (by a show of hands) they had not seen the presentation.

Dr. Jones began by stating the feasibility study does include past information from other entities and also recommends working in partnership with other organizations and other projects. She went on to give the same presentation she gave on August 3, 2017 – please see the minutes of 8/3/17 for a synopsis of the feasibility study presentation.

When the presentation concluded, the board discussed all the information that had been supplied to Dr. Jones and RLS prior to them beginning their own sampling and study. Sam Janson stated this feasibility study was not done in a vacuum, in addition State Law outlines to process of a lake board and it requires the lake board to hire a consultant to do the study. He added the lake board was formed in order to find a long term solution and funding mechanism for continued treatment of this lake rather than continue to rely on the work of volunteers and support of only a portion of the residents on the lake. Dr. Jones stated it would have been very difficult to put together a comprehensive study and plan without all of the past data the board supplied her with. She also added that she has worked on hundreds of lakes and Bear Lake is one of the most impaired lakes she has ever seen, if not the most impaired. She added that the lake is out of balance and dying and it is imperative to determine how much if any oil is in the whole body of the lake or it's sediment before starting to implement certain types of technologies for restoration and added that hydrogen peroxide would most certainly never be allowed by the Michigan Dept. of Environmental Quality, and all treatment must go through the DEQ for permitting before being implemented. She also added that using the aeration would be very risky without the scientific information in hand up front, and the science takes time; she did note that aeration results are seen very quickly once implemented.

Kim Arter went on to explain that the duty of the board at this meeting is to make a determination of the practicability of the project, based on all the information submitted and in doing so has the ability to approve the plan as presented, or to modify the plan and the costs as they determine to be practical. If approved to move forward with this project, it is also the duty of this board to set a date and hold a public hearing for the proposed special assessment roll.

There was extensive discussion on numerous topics:

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- Questions were asked by the board if DEQ permitting fees were in the presented budget, to which Dr. Jones answered yes, she also noted all work must be bid out and permit fees are included in the line item for herbicides/invasive species removal.
- There was discussion and questions regarding the line item for Professional Limnologist Services and what's included in that portion of the budget. Dr. Jones explained those costs include her companies services for surveying and sampling and testing of the samples and the reason for the large amount in year one and two is for the sediment core testing to find out if petroleum/oil is in the lake and where and how much. She further explained that while these costs are somewhat large, it is imperative to know if/where any oil is or might be before implementing any aeration treatment. She additionally explained this line item also includes meetings, workshops, annual reports, public education and contractor oversight. Darrell VanFossan commented the Bear Lake Preservation Association wants to take over public education activities and asked if this could reduce the costs in the budget for education. Brenda Moore noted that the education of the public with the kind of science/data being presented is above what a volunteer group can take on and disagreed with cutting this out of the budget, stating in her opinion professional services is not the place to "scrimp in the budget". Darrell VanFossan stated he thought the board would be handling the bidding process and the billing processes for all the contractors that will be utilized for the various treatment technologies. Dr. Jones noted that the board

would be advised and involved all the way through, but her company accomplishes the day to day tasks and monitoring and oversight. Brenda Moore stated she feels the professional expert services being provided are coming at a bargain. Dr. Jones stated she understands that the numbers seem high and they are large and she doesn't take them lightly, but proposed what she feels is necessary to do the job right and not cut corners. It was agreed to leave this budget item as proposed.

- Discussion regarding the proposed boat washing station covered: Horton Park renovations taking place next year – no water/power currently available and noting it is not the major source of boat access to the lake as it is a shallow launch that can really only accommodate kayaks, canoes, jet ski's and very small fishing boats; discussed looking into getting a grant for this item in the future. It was agreed that this item should be removed from the project at this time.
- Kim Arter noted that both Laketon Township and The City of North Muskegon loaned this lake board \$7500 each (total \$15,000) to cover initial costs/fees/publications etc and those funds must be included in the budget to pay the two communities back. It was agreed to budget \$18,000 in the first year in the line for mailings, publications and expand said line to cover the loan and administrative costs as well as to include \$1000 in each year after that to cover administrative costs such as recording secretary costs and similar items.
- Sam Janson inquired about the aeration system, wanting to know if it is like the aeration system used by the county as Muskegon County has one of the largest lagoon wastewater treatment facilities and proposed that perhaps there could be costs savings realized by utilizing existing county &/or city staff to install such a system in Bear Lake. Dr. Jones explained that it has to be a laminar flow aeration system, noted that landowners sometimes volunteer to house the compressors on their property in exchange for a reduction in their assessment. RLS scientist Mike Solomon went on to explain the aeration system will be engineered and designed specifically for this lake with the right number of compressors, a large number of diffusers, and potentially miles and miles of weighted lines which will be a fairly complicated system and the numbers in the budget reflect that type of system. Sam Janson expressed concerns about over budgeting. Brenda Moore expressed confidence in the consultants to provide the best educated proposed budget due to their level of experience and expertise doing this kind of work on a daily basis. It was agreed to leave this budget item as is.
- Discussion of the budget for several other items occurred, with Sam Janson expressing his concern with attorney fees, assessment appeals seeming to be budgeted on the high side. Kim Arter noted that with regard to costs when it comes to assessing property owners, the assessments must cover the costs; the costs in the budget are the numbers used to calculate appropriate assessments and if the collected assessments are not enough to cover the actual costs incurred there would have to be additional assessments levied (refunds would be issued if assessments collected surpassed the costs incurred) so care must be taken to be as accurate as possible when making this proposed budget for the project. After discussion, it was agreed to reduce the budget for attorney fees to \$1500 per year for each of the 5 years and to reduce the budget for appeals to \$5000 for the first year and to \$500 for each of the remaining 4 years.
- Darrell VanFossan brought up a concern that was also expressed by a resident regarding the lack of treatment in the plan until year 3, especially considering the toxic blue-green algae was so bad this year and asked about continued copper sulfate treatment and how to attack the nutrient load. Dr. Jones explained that treatment of invasive species is in the plan beginning with year one, including possible herbicide treatments and bioaugmentation where aerobic microbes are applied to the lake which break down nutrients quickly and outcompete anaerobic microbes. He also asked Dr. Jones about managing nuisance native plants like coontail. Dr. Jones explained that even natives can become invasive and can be subject to treatment if/when needed. Discussion of the budget for invasive removal was discussed at length and it was decided to leave it as presented. This led to a discussion that perhaps a 3 year plan should be considered instead of a 5 year plan and the pros/cons of each time length. Dr. Jones noted that management may be able to be accomplished in 3 years, but her understanding was to propose a restoration plan which is much more involved and needs to be 5 years to accomplish. Brenda Moore noted the potential oil issue isn't even addressed if a 3 year plan is undertaken as it will take the first 2 years just to gather the scientific data to know how to proceed. Dr. Jones recommended the 5 year plan to accomplish restoration. Sam Janson commented on doing a 3 year project to gather the prudent scientific data needed to know if these technologies proposed will work. Darrell VanFossan

agreed that he sees a gray area on what the outcome will be. Brenda Moore felt the board is questioning the experts and their knowledge. Dr. Jones commented she is very uncomfortable scientifically with a 3 year plan as there wouldn't be any post implementation monitoring and expressed concern that a 3 year plan would fail. She added that a 3 year plan would only be a monitoring plan, not a restoration plan. Mike Solomon commented that RLS has implemented all of these technologies in other lakes and they work. Brenda Moore added that if we go with a 3 year plan, at the end of the monitoring this board would have to go back to the people and back through this process to approve another project for restoration, and more money. It was noted that it may be difficult to gather public support for a second project and to spend more money when they have no visual improvements after 3 years of just monitoring. It was agreed to continue on with a 5 year project/plan as proposed.

- Sam Janson stated he doesn't feel it is necessary to have any professional memberships/associations joined by this board, even though it is a small item it is unnecessary. Darrell VanFossan and the other members also agreed and the \$100 per year for professional memberships was deleted from the proposed budget.
- Discussion regarding the tributary filter/buffers took place with members noting other projects on the old celery flats and the restoration of the wetland there has not had time to completely grow back in and do its natural job of trapping the nutrients and sediments. Sam Janson expressed that it may not be cost effective to install a tributary buffer now, not knowing what affects the restored celery flats will have. Brenda Moore agreed and noted that the lake did not become impaired overnight and restoration results cannot be expected overnight. She added that DEQ permitting can take 12 to 18 months and by that time a filter/buffer may not be needed if the wetland starts to grow in and take over the job of absorbing sediments and nutrients. It was agreed to completely remove the tributary filter/buffer item from the project and proposed budget.
- Discussion also covered the line items for audit/bond/insurance which was left as proposed and the line item for contingency. Contingency was proposed to be 15%, discussion revealed the board felt this was too high. Dr. Jones said 15% is recommended, but 10% would probably be adequate. It was agreed to reduce the contingency line item to 10%.
- Sam Janson commented he feels it is this board's responsibility to do its due diligence and trim unnecessary items. Kim Arter noted several large items and several small items have been agreed to be reduced or removed from the proposal and it should make it more acceptable and affordable.

Sam Janson moved to approve the project as discussed and amended and to approve Resolution 2017-01 with the revisions discussed. Darrell VanFossan supported the motion. A roll call vote was taken.

Voting in favor of the motion: Kim Arter, Brenda Moore, Darrel VanFossan and Sam Janson.

Voting in opposition of the motion: None.

Motion Carried.

Kim Arter reminded that a date must now be determined for a public hearing to be held for a proposed special assessment roll on this project. She had a calendar available and discussion covered the law requirements for the notice on this public hearing to be published twice in the newspaper and a mailing to all properties affected by the proposed special assessment. After looking at the calendar a date was selected.

Brenda Moore moved to schedule the special assessment public hearing on Thursday October 5, 2017 at 6:00 pm at Laketon Township Hall, with notice to be published in the newspaper and mailed to property owners as required by law. Sam Janson supported the motion. The motion carried by voice vote.

It was also noted that the resolution passed tonight must also be published in the newspaper, as required by law.

**ADJOURN:** Brenda Moore moved to adjourn the meeting. Darrell VanFossan supported the motion. The motion carried by voice vote and the meeting adjourned at 9:24 pm.

Respectfully Submitted:  
Veronica West  
Recording Secretary

Approved by the Bear Lake Lake Board on \_\_\_\_\_.

Signed: \_\_\_\_\_.