



CANDLEWOOD LAKE AUTHORITY

P.O. BOX 37 • SHERMAN, CONNECTICUT 06784-0037 • (860) 354-6928 • FAX (860) 350-5611

Minutes of Regular Meeting March 14, 2018

Attending:

P. Schaer	Sherman
G. Linkletter	Sherman
D. Cushnie	Sherman (electronic)
J. Hodge	New Fairfield
J. Keating	New Fairfield
J. Murphy	Brookfield
W. Lohan	Brookfield
C. Robinson	Danbury
D. Rosemark	Danbury (electronic)
M. Toussaint	New Milford
J. Wodarski	New Milford
S. Kluge	New Milford

Absent:

E. Siergiej	Danbury
J. Main	New Fairfield
B. Brown	Brookfield

F. Frattini, CLA Administrative Coordinator
M. Howarth, CLA Public Education Director
Members of the CLA Marine Patrol – Capt. R. Barnard, Lieut. N. Mellas

Recorder: F. Frattini

Guests:

Approximately nine members of the public.

Prior to the regular business meeting, Stuart Piermarini and Len Greene of FirstLight Power Resources gave a PowerPoint presentation on how their business interacts with Candlewood Lake. They spoke about drawdown strategy and Zebra Mussels at the Rocky River Plant. He outlined how the river system works and their generating capacity at their stations along the Housatonic River. He noted that the Candlewood Watershed is not sufficient to maintain the lake, pumping is needed. He advised that the level of shallow drawdown is 422 to 424' and deep drawdown is 420 to 421'. This season they were down to around 422' and by March 5th were back to 428'. Zebra Mussels are established in the Housatonic and they have been tracking but will discontinue at Bulls Bridge and Falls Village as they are established there but they will continue to monitor Candlewood. Biodiversity has done this monitoring for the past 6 years and will continue. Mrs. Schaer thanked them for their time and extremely informative presentation. She asked if they would be willing to come to State of the Lake and give the same presentation – Mr. Piermarini noted he would. Mrs. Schaer asked the delegates if there were any questions for Mr. Piermarini and Mr. Greene. Have you tried

anything to control the Zebra Mussels? Yes – Zequinox, ultraviolet light and at the stations scraping them off. They have been found outside Rocky River but not in the guts. Questions were asked regarding the Grass Carp Stocking and would FLPR be agreeable to stocking further north in New Milford? Mr. Piermarini noted that was not FLPR who restricted the location it was DEEP’s requirement that the Carp not get into the Housatonic. The smaller fish could fit through the trash racks, so larger fish could be stocked in that area. Mrs. Schaer confirmed that larger size grass carp were stocked in the New Milford area for this reason. Do you see water quality in the lakes – Candlewood, Lillinonah and Zoar? Water quality does not effect pumping and generation and they do not compare one lake to another but did note that all are green at some time from algae growth and each has their own concerns. The Shoreline Management Plan is up for renewal – they will review in 2018 and submit in 2019 and there is prescriptive process that they must follow that includes stakeholder comments. With no further questions, Mrs. Schaer and the delegates thanked them very much for their time and information. They left at 8:13 PM

Chairman, Phyllis Schaer, called the regular meeting of the Candlewood Lake Authority to order at 8:14 P.M. at Brookfield Town Hall Brookfield, CT. She welcomed the guests.

Public Comment: Mrs. Schaer asked that anyone wishing to speak keep their comments to no more than three minutes.

Carolyn Rowan asked are there studies on what happens to Zebra Mussels when they go through the penstock? No definitive study but Mrs. Schaer will look into this.

Mrs. Schaer asked Mr. Toussaint to read into the record a letter from the First Selectman of the Town of New Fairfield regarding two of the Town’s delegates and the relationship of the CLA Patrol to the towns. Letter is attached to these minutes.

Secretary’s Report: Jerry Murphy, Secretary, noted there were no changes and *made a motion to accept the minutes of the February 14, 2018 meeting as written, seconded by John Hodge, motion was voted with all in favor and Chris Robinson abstained. Motion carried and minutes have been accepted as written.*

Public Safety Committee: Committee Co-Chair Jerry Murphy advised that the Lake Patrol does a terrific job; they work well together.

Jack Keating arrived at 8:26PM

Mrs. Schaer advised that she had received an opinion from Attorney Rose on oversight of Lake Patrol/Chain of Command and related matters. As this would be considered Attorney Client Privilege the delegates could review in Executive Session, *Dan Rosemark made a motion to waive Attorney Client Privilege regarding the Memo dated March 14, 2108 from Michael J. Rose, Esq. and discuss with Atty Rose who was attending electronically, motion seconded by Jack Keating and voted with all in favor.* Mrs. Schaer and Mr. Toussaint read the Memo, which is attached to these minutes. Attorney Rose made a point to note that he had spoken to the DEEP attorneys McCaliff

and Decker on the MOA and they advised that the DEEP appoints, they do not employ, supervise, etc. Jack Keating noted that the issue that the CLA employs was not in dispute as the CLA writes the paychecks and indemnifies the patrol, the Chain of Command is in the MOA – Attorney Rose noted that the CLA By-Laws is the constitution of the Authority. While it is OK to include a chain of command for boating law enforcement in the MOA, the chain of command is for in-the-field guidance and day-to-day operation it does not turn the running of the patrol over to the Chief or the DEEP. To divest supervision, you need to amend the CLA By-Laws. Jack Keating referred to State Statute – Mrs. Frattini read the section referred to:

Section 7-151a.....”Said authority shall act as agent for the member towns in cooperating with the Commissioner of Environmental Protection in the enforcement of the boating laws on such water”.

Joe Wodarski added that the original CLA was for the Patrol to be able to enforce boating law over the whole lake not each town individually. Discussion followed on the revisions to the proposed MOA for 2018 to 2020. Revisions to the MOA were discussed – Appendix A – Section C #3 remove The Executive Committee of the CLA and change it to “the CLA Board of delegates”. The Training Section in Appendix A had been mistakenly deleted from the 2015 MOA and an Addendum had to be added, so to avoid that it was included in the proposed MOA as Section S but there was a revision under Post certified “b” – to add “at discretion of DEEP EnCon supervising Sergeant.” Mr. Wodarski noted that the CLA Personnel Policy Manual influences the operation of the LPO’s and noted suggested changes on Page 9 – Section 13 “Dismissal of Employee” Under Seasonal Employees section remove reference to Executive Committee and change it to CLA Board of delegates” Discussion on procedure for an employee who disagrees with a review or files a complaint, noting that the Board of delegates has the final say. Mr. Hodge noted it should be the same process for hiring and for firing – Public Safety to CLA Board. Complaint could go to Executive Committee for review and then to the CLA Board for action. Mrs. Schaer referred to the suggestion of Attorney Rose who recommended an Ad Hoc Committee to review and update the personnel policy.

Joe Wodarski made a motion to adopt the changes to the MOA Appendix A – Section C #3 remove The Executive Committee of the CLA and change it to “the CLA Board of delegates”. In the Training Section in Appendix A - Section S a revision under Post certified “b” – to add “at discretion of DEEP EnCon supervising Sergeant” and send to DEEP. Seconded by Jerry Murphy. Discussion followed. Mr. Wodarski believes that the Personnel Policy needs to be done now as well. Discussion continued.

John Hodge moved to call the question, motion seconded. The motion to call the question was voted on with all in favor, and Mrs. Schaer opposed.

Vote on the motion to accept the MOA changes were all in favor, motion carried, and changes to MOA have been accepted.

John Hodge made a motion to approve changes to the Personnel Policy on Page 9 Seasonal Employees – Attorney Rose called for point of order that this item needed to be voted on to add to the Agenda – Joe Wodarski made a motion to add the changes to the Personnel Policy to the Agenda, seconded by Jerry Murphy. It was noted that 2/3 vote is needed to add an item to the agenda – *motion was voted – Opposed: Steve Kluge, Phyllis Schaer, Mark Toussaint and Bill Lohan. In Favor, Dan Rosemark, Joe Wodarski,*

George Linkletter, John Hodge, Jack Keating, Chris Robinson and Jerry Murphy. 11 voting – 4 opposed and 7 in favor – 2/3's is 8. Motion failed. (note: Doug Cushnie was no longer on the line) Mrs. Schaer noted that discussion and review of the Personnel Policy would be on the Agenda for the April meeting. At 9:58PM Mrs. Schaer thanked Attorney Rose who left the meeting.

Still under Public Safety – Chris Robinson read a memo from Mark Howarth regarding the buoys that were requested by Mary and Kevin of Danbury to be located in the Dike's Point Area – noting that the CLA had learned that "Slow No Wake" must meet the existing State regulation for a speed buoy (area it is deployed in must be less than 200 feet across).

Discussion followed noting that the present locations of the buoys were in areas that may exceed the 200-ft. limit. Mr. Howarth added that the measurements need to be done from the water with GPS coordinates for the application. Mary offered to take someone out as soon as she can get a boat in the water, Mr. Howarth accepted the offer. Mrs. Schaer noted that the Authority is still working to resolve this issue.

Due to the lateness of the hour items were taken out of order:

Chairman's Report: Phyllis Schaer, Chairman advised that the April Executive and Monthly meetings will be changed: the Executive Committee meeting will be scheduled on March 28th as a Special meeting, the regular Executive on April 4 will be canceled and the CLA monthly will be held as a special meeting on April 4th at Mallory Town Hall, Sherman and the regular CLA monthly meeting on April 11th will be canceled. The Public Awareness Committee meeting will also be a special meeting on April 4th and the regular committee meeting on April 11th will be canceled.

Mrs. Schaer reported that the suggested items for Grants are additional buoys, the Cleanup, and the Decon plant on a preliminary basis with staffing from an employment agency. Mr. Wodarski added that he had been speaking to the Chief and would have some items shortly such as radio/repeater, PFD vests, etc. Mrs. Schaer reminded that the grants must be submitted by April 1st.

Vice Chairman's Report: Vice Chairman, noted he will give his time to other items on the Agenda.

HR Committee: Mr. Toussaint noted that the committee would like to discuss the Executive Director Position and asked for a motion to go into Executive Session. *Jerry Murphy moved to go into Executive Session to discuss the Executive Director Position, seconded by Joe Wodarski and voted with all in favor.* Everyone except the following left the room and the recorder was turned off at 10:14 PM – attending the Executive Session: Dan Rosemark (electronic) John Hodge, Jack Keating, George Linkletter, Steve Kluge, Bill Lohan, Jerry Murphy, Phyllis Schaer Mark Toussaint, Joe Wodarski, Chris Robinson and Frances Frattini. Mr. Keating questioned Mrs. Frattini remaining – she noted that she is a member of the HR Committee. At 10:25PM Mark Toussaint made a motion to come out of Executive Session and Joe Wodarski seconded, voted with all in favor. Those who left were invited back and the recorder was turned on. Mr. Toussaint made a motion to hire Mark Howarth as the Executive Director of the

Candlewood Lake Authority, seconded by Joe Wodarski. Motion amended by Mr. Toussaint to add "at an annual salary of seventy-two thousand (\$72,000.00) dollars including benefits", amendment seconded by Mr. Hodge and accepted by Mr. Wodarski and voted with all in favor and George Linkletter abstained. Mr. Howarth will be the next CLA Executive Director – Congratulations.

Treasurer's Report: Treasurer Bill Lohan reported that we are 2/3 through the year and year-to-date income is 91% of budget. Mr. Rosemark asked if Danbury has paid in full, –Treasurer noted Danbury still owes \$20,200 and should be paid in April/May. Expenses year to date are Administration (without an Executive Director) is at 37%, Equipment/Facilities 67%, Public Safety 63%, Public Awareness 64% and Watershed Management 67% making the total year to date expenditures 63% of the total.

He advised that there were a number of transfers totaling \$201.87 as follows: \$102.73 from Line #102 Exec Dir/Fringe to Line ##123 Computer Hardware/Software \$78.45 from Line #312 Gas and Oil to Line #311 Boat Maint/Reimb; \$14.70 from Line #312 Gas and Oil to Line #318 Maint/Miscl; \$5.99 from Line #417 Fundraising to Line #414 Subscriptions; totaling \$201.87. Bill Lohan moved that the above transfers be made as outlined, seconded by George Linkletter. The motion was voted with all in favor. Motion carried, transfers will be made on the books as of February 28th.

Mr. Lohan moved that the Report of Profit and Loss Budget vs. Actual for the month ended February 28, 2018 be accepted as presented, motion seconded by Mark Toussaint and voted with all in favor. The report has been accepted and filed for audit.

Mr. Lohan noted that it is time to approve the Auditor for year ending 6/30/2018 – he advised that he recommends continuing with Sandra Welwood CPA who had quoted \$5,600.00 for the annual audit. Mr. Lohan made a motion to accept the proposal of Sandra Welwood CPA for the audit for the year ending 6/30/2018, seconded by George Linkletter and voted with all in favor and Jack Keating and John Hodge opposed. Motion carried and the proposal has been accepted.

Phyllis Schaer moved to adjourn the meeting. Seconded by George Linkletter, Meeting adjourned at 10:34 P. M.

Respectfully submitted,

Jerry Murphy, Secretary
Frances Frattini, Administrative Coordinator
r/b/ps&mh

These minutes are not considered official until they have been approved at the next regularly scheduled meeting of the Candlewood Lake Authority.



CANDLEWOOD LAKE AUTHORITY

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March 14, 2018
Public Education
Mark Howarth

Monthly Report:

- CLAMP is putting on a Safe Boating Course March 23 & 24 in New Fairfield at the Sail Harbour Clubhouse. We updated our old online payment and registration system for this class because the new one mentioned last month we were later told can't yet handle the type of payment system we require. After sending out an email and Facebook post, the class sold out as of March 12th.
- Planning for the 2018 State of the Lake is progressing. We now have an agreed upon date and location reserved - April 22nd at the Sherman Firehouse. We will continue to develop the format for the day and look to open registration for the event soon.
- Initial planning for the 2018 Clean Up has also begun, anticipated for late May.
- We were excited to receive the news that the Danbury / New Fairfield Woman's Club awarded us a \$500 grant, which we will graciously accept at their awards breakfast in April. Funding will go towards updating our 20-year-old Enviroscape and other related educational materials.
- We have been speaking with the Lake George Parks Commission to better understand how they staff and operate their boat wash stations, in the hopes of offering a pilot program like that for Candlewood in the future.
- We submitted the AER 2017 water quality report to the CT DEEP per our grass carp permit requirements. Both the report and presentation made to the CLA Board have been posted on our website on the water quality page.
- Attended the March Lake Zoar Authority meeting to listen to Dr. Bob Kortmann's presentation.
- We are currently designing new items which will be produced for our store and events for the 2018 season.
- Attended budget meetings for Sherman and New Milford.



Town of New Fairfield
Selectmen's Office
New Fairfield, Connecticut

March 14, 2018

Candlewood Lake Authority Board of Delegates:

The role of CLA's Board of Delegates is to support the mission of CLA and to help it as an organization to address challenges as they arise. Khris Hall and I were elected in November on a clear platform of working with the CLA to protect the Lake and have asked our Delegates to work cooperatively with the CLA to achieve that goal. I am concerned that the actions and positions of two of New Fairfield's three current Delegates have not been consistent with that objective.

This is Jack Keating's last meeting as a Delegate from New Fairfield. He will be replaced next month with a Delegate who supports the mission of the CLA and will work cooperatively with the Board on all of its challenges. Mr. Keating no longer acts as New Fairfield's Town Counsel, and therefore any legal opinion he expresses concerning the CLA is purely his own opinion.

I was dismayed to learn that John Hodge and Jack Keating both attended the last meeting of the Public Safety Committee and urged the Committee not to accept the proposed changes in the Memorandum of Agreement between the CLA and DEEP that would clarify that CLA has responsibility for the Marine Patrol. Their statements to the Committee do not reflect the views of the Town of New Fairfield. I support the proposed clarifications.

The Marine Patrol is a critical part of the CLA. Without it, the safety of boaters, swimmers, and fishermen cannot be assured. The CLA pays the salaries of the officers, pays insurance for their operations, and owns the boats they use for patrolling. A law enforcement unit with no oversight does not make sense and should not be separated from the overall mission and oversight of the CLA. Whatever issues that lead to the current misunderstanding between CLA executives and the Marine Patrol should be addressed and resolved rather than driving a false wedge between two parts of the same organization that should be working together.

Respectfully submitted,

Pat Del Monaco
First Selectman

Memo

To: Candlewood Lake Authority
From: Michael J. Rose
CC: File
Date: March 14, 2018
Re: Oversight of Lake Patrol Officers/Chain of Command and related matters

I. Background

In November 2017, the Chairman of the Candlewood Lake Authority asked us to address what role the Candlewood Lake Authority (and specifically its Executive Committee) had with respect to providing oversight to Lake Patrol Officers. We were provided with the Candlewood Lake Authority By-Laws and Personnel Policies, and based on a review of those documents, issued an opinion concluding that the Executive Committee played a role in the evaluation and retention of Lake Patrol Officials. (**Attachment A**).

During a December 13, 2017 CLA meeting, Delegate Jack Keating provided a counter perspective in the form of a memorandum (**Attachment B**) and suggested that state statute and a Memorandum of Agreement with the Connecticut Department of Environmental Protection (“DEEP”) overrode the bylaws and that, in sum, the CLA had no oversight authority over the Candlewood Lake Authority Marine Patrol (CLAMP) Officers. The thesis was, in sum and substance: 1) that the Commissioner of DEEP appointed the Patrol Officers; and 2) the Lake Chief (or alternatively, the Commissioner of DEEP) has the authority to renew or decline to renew officers.

The Authority authorized the undersigned to evaluate the Keating opinion and determine whether the prior Ford Harrison opinion was valid. As discussed below, we conclude that the general premise of the Ford Harrison memorandum was valid, and that neither the MOU nor the General Statutes divest the Authority of supervision over its employees. The Keating memo does point out a disconnect, however, between the Bylaws, which give the Authority final oversight over “actions” and the Personnel Policies,

which envision a role for the Executive Committee in the termination of employees.¹ We agree with Mr. Keating that adverse employment actions are the type of action mandating Board approval.

Additional questions have been raised by Delegate Dan Rosemark about the Executive Committee's level of authority and autonomy vis-à-vis the Board itself. Those questions are addressed below.

As events proceeded, the CLA's Memorandum of Agreement expired and was scheduled for renewal. The Chairman, Phyllis Schaer, asked us to draft and or/review clarification to the MOA that would make clear that the Delegates had not delegated all oversight of its employees to the Patrol Chief or the State of Connecticut.² We made modifications and forwarded same to DEEP for review and comment only. Subsequent to that, the Public Safety Committee held a Special Meeting and voted to "reject" the draft proposal and maintain the status quo. We address the status of the MOA below.

II. Rosemark Inquiry

Delegate Rosemark presented the following questions:

- (1) Does the Public Safety Committee report to the Executive Committee?
If so, where is such authority granted and what is the process? Are all matters under the Executive Committee review?

Answer: No.

The Authority is governed primarily by a set of By-laws which require a 2/3 vote to change. Those By-laws control all matters except those which conflict with other, controlling authority. For example, federal law would trump the by-laws, if in conflict, and state law would likewise trump the by-laws if there were a bona-fide conflict. Conversely, personnel policies which conflict with the by-laws would be void. It is a common practice in reviewing construction such as this to avoid interpretations of conflict unless readily apparent.

Under the by-laws, there is an Executive Committee which serves as advisory council to the Chairman. It has the voting power to make Committee appointments, but even

¹ We suggest the Chairman appoint a group, possibly the Executive Committee or another ad hoc body, to revise the policies to avoid further controversy over the role of the Authority in overseeing its employees, specifically Lake Patrol Officers.

² We are very familiar with the controversy and discord between several members, the Chair, Lake Patrol supervisors and others. We did not consider the suggestions by Ms. Schaer to be "changes" to the agreement, because we had already concluded the agreement (and more importantly, Conn. Gen. Stat. § 7-151, did not make Lake Patrol Officers employees of the State, subject to state oversight, or otherwise divest the Authority of the ability to supervise its employees. Indeed, § 7-151 expressly states that LPO's are not state employees and they remain employees of the Authority. A key legal definition of the verb "to employ" includes the ability "to control." As such, we did not see ourselves altering the MOU, or shading the assessment to favor one party over another.

those appointments are subject to Authority Delegate approval. As such, the by-laws themselves limit the authority of the Executive Committee to: 1) advise the Chairman on planning and directing activities, establishing policies and developing positions; 2) appoint committee chairs, subject to Authority approval; 3) assist the Chair in assessing committee effectiveness; 4) assist the Chair in assessing the effectiveness of employees and recommending compensation – subject to Authority approval. The Executive Committee is also authorized to appoint the Chief and Deputy Chief of the Lake Patrol, upon recommendation of the Public Safety Committee.

In sum, in the ordinary course, the Public Safety Committee does not report to the Executive Committee.

- (2) Do all of the other committees (not subcommittees) report to the Executive Committee? If so, where is such authority granted and what is the process? Are all matters under the Executive Committee reviewed? Does the Executive Committee override, for instance, the Watershed Committee or Finance Committee? How would that occur?

Answer: No

As discussed above, the Authority's By-laws control, even if policies, manuals, practices or regulations contradict the By-laws. This is not to say that the Chairman is precluded from soliciting Executive Committee advice on the effectiveness of committees or sub-committees, or utilizing the Executive Committee to vet decisions within the Chair's scope of authority. Further, the Executive Committee appears to be vested with the authority to name a Chairman (subject to Authority approval) and committee members, so there is a slight degree of "oversight" provided in the By-Laws. However, the Executive Committee has generally no authority to overrule actions or recommendations of the standing committees.

The second set of questions poses the issue slightly differently. It asks if all matters fall under the Executive Committee's review. This is a different question since it asks if the Executive Committee is permitted to review committee decisions if the Chair requests guidance. The Executive Committee certainly has the prerogative of reviewing committee action if asked by the Chairman (see above) but this review is: a) not a de novo review; and b) cannot reverse, revise, or thwart another committee's action or recommendation. Moreover, as a matter of comity and efficiency, this review should be used sparingly. It should be used sparingly because such review invariably creates unnecessary tensions with members of other standing committees who should have greater expertise, and who often have donated hours to assessing the underlying issue.

For example, suppose the Public Safety Committee recommended a substantive change in policy. Under the By-laws, that recommendation goes to the full Authority for a vote. The Executive Committee, or the Chair, cannot veto that recommendation or prevent its presentation to the full Board. However, if a question was raised about the process that went into the recommendation (e.g. a conflict of interest or claim of self-

dealing), the Chair would be within her authority to ask for guidance from the Executive Committee. In such a case the review would be permissive, and non-binding.

- (3) If the Executive Committee is a super committee (or intended to have the oversight over all other committees), what is the relationship between the Executive Committee and the Board of Delegates?

Answer: Not applicable. The Executive Committee is not a super committee, but merely serves to expedite agendas, evaluate policy, appoint committee members, and approve CLAMP management and the like.

III. Keating Memorandum

Following the presentment of the Ford Harrison legal opinion on power to appoint, Delegate Jack Keating drafted a memorandum (hereinafter “Keating Memorandum”) which raised additional questions and presented additional material. In particular, Mr. Keating drew attention to Conn. Gen. Stat. § 7-151b³ and the governing Memorandum of Agreement with the State of Connecticut Department of Energy and Environmental Protection.

Each question addressed by Mr. Keating is generally addressed below, based only on our assessment of controlling law and the most reasonable interpretation of the By-laws, MOA (to the extent applicable), and state statutes. For ease of review, I have broken down Mr. Keating’s points into general topics.

A. The Executive Committee is not authorized to hire or fire.

It is true that the By-laws do not vest either the executive committee or the Chairman with the authority to hire or terminate employees. Moreover, Committees cannot bind the authority generally. See, Article V, Sec. 2 (vesting the Board with the power to take action on behalf of the Board). However, the By-laws are silent on hiring and termination, so it would not be entirely accurate to conclude that the only interpretation calls for the entire Authority to make each and every hiring, non-renewal, and termination decision. While

³ The statute provides: The Commissioner of Energy and Environmental Protection may appoint lake patrolmen to enforce any boating laws delegated by said commissioner. Any such lake patrolman may carry a firearm or baton, or both, only upon completion of a basic police training course defined in section 7-294a or a firearms safety course offered by the Department of Energy and Environmental Protection. Such lake patrolmen **shall not be construed to be state employees and compensation therefore shall be paid by the municipality or lake authority** responsible for the lake. Such lake patrolmen may use their own vessels to enforce the provisions of this section, provided the state shall not be liable for any damage caused by a lake patrolman using such vessel in the course of such lake patrolman’s duties. A municipality employing lake patrolmen shall assume liability for damage caused by such patrolmen pursuant to section 7-465. A lake authority may protect and save harmless any lake patrolman **employed by the authority** from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, suit or judgment by reason of alleged negligence on the part of such lake patrolman while acting in the scope of such lake patrolman’s employment. (Emphasis added.)

the By-laws vest the Authority, not Committees, with the ability to take “action”, in a broad sense such a liberal construction would require the whole Board to review each resume (since rejection of a resume is an “action”), and review and approve such mundane matters as selection of internet providers. Plainly, some degree of delegation is implied in the By-laws and can be inferred by necessity and practice.

As noted above, the By-laws fail to expressly delineate who disciplines or discharges members of the Lake Patrol. The By-laws do clearly state that Lake Patrol Officers shall “perform all duties in accordance with the requirements of the Public Safety Committee and the Authority.” As such, the Public Safety Committee sets the requirements of the position(s). However, this is not to say that the Public Safety Committee hires, evaluates or disciplines.

Therefore, the personnel policy manual augments a lack of direction in the By-laws, but cannot supersede a contrary provision. As it relates to LPO’s, the Public Safety Committee plays a key role in setting standards and the like. However, the By-laws fail to define its role regarding LPO supervision and indeed, the Executive Committee is charged with assessing the effectiveness of each employee. As such, we must look to other sources.

In drafting the Personnel Policies in 1996, a majority of Delegates concluded the better practice was to delegate authority for disciplinary employment actions to: a) the supervisor; and b) if the appropriate committee agrees, the Executive Committee. It is in this area where we agree with Mr. Keating’s contention, and conclude the better interpretation is that tangible “actions,” such as termination, a decision to not reappoint, etc. should be subject to full Authority review. This can be structured in a number of ways, but these tangible practices plainly are “actions” and the better course is to ensure terminal actions meet with all applicable By-laws. General supervision and oversight may be addressed as specified in the 1996 Policy Manual.

B. LPO’s are staff personnel for the purposes of the By-laws.

Article IX, Sec.1 authorizes the Authority to hire “staff personnel.” The phrase “staff personnel” is not defined in the By-laws. Intuitively, LPO’s would seem to be in a different class of employee than would be a secretary or bookkeeper; however the distinction is immaterial because unless LPO’s are “staff personnel,” the Lake Authority has no legal right to hire them. See By-laws, generally. The MOA cannot authorize the retention of employees/patrol staff if the By-laws do not permit it. Thus, the authority to hire LPO’s appears to be vested in the in language that allows the retention of “staff personnel” as the Authority “sees fit.”

Moreover, as discussed below, their status as LPO’s does not limit the CLA’s ability, and responsibility, to supervise the LPO’s.

C. Section 7-151b and the MOU do not control hiring/appointment/dismissal of LPO's.

The contention that the State of Connecticut DEEP controls the hiring and renewal of LPO's is not valid for a variety of reasons. It is a crucial question, since that construction means that the member town's appointed delegates, delegated control over Authority employees to the state of Connecticut, and left themselves with no ability to change policy or behavior, but with unlimited liability for damages. Neither the MOA, state statutes, the plain language of the by-laws or general concepts of employment law allow for such a construction. As such, all personnel, including LPO's are employed by, serve at the pleasure of and serve at the direction of the Lake Authority. The specific oversight structure can be debated, but the duty to direct all employees cannot be subject to debate.⁴

First, DEEP has overtly acknowledged that it does not view LPO's as its employees: it does not supervise them, and fully expects the Authority to make all hiring and firing decisions.⁵

Next, if the Authority is to read the statute conservatively – i.e. with the thesis that power not delegated by the Authority is retained by the Authority – then the same philosophy should guide this analysis. Since the authority to fire rests solely with the Authority by virtue of the By-laws, it cannot be delegated to the state absent a By-law change. The By-laws were not changed to authorize such a delegation; thus the claim that CLA LPO's may only be removed or supervised by the “chain of Command” is not supported.

The alternative reading is further flawed by the unintended consequences of such a reading: if only the Commissioner can remove LPO's, the Authority essentially would have granted near life time employment to the LPO's, since DEEP does not have any employment of LPO's. DEEP surely appoints – in the context of authorizing a Lake Authority employee to enforce boater safety law – but it does not employ.

⁴ This is not to say the Delegates are involved in day to day activities. You have delegated that duty to the Chief and Deputy Chief of Lake Patrol. However, their actions are not beyond review. The “Chain of command” language does not necessitate a contrary conclusion. The chain of command language would address how the DEEP and LPO interact, often in a policing-related matter. In a crisis in the field, the chain of command would be utilized.

⁵ For example, the MOU itself recognizes that the Authority will recruit and accept applications for Lake Patrol Officers. See MOU, “Appointing Powers.” However, that language appears to be augmented by Appendix A (stating the Chief shall be charged with “directing and evaluating the performance of the LPO's” in consultation with the EnConn. Sgt.). Our view is that if the Authority wishes to delegate evaluation to its Chief, and the Chief utilizes additional expertise, there is no problem with that. However, the Chief's decision on evaluations is not a final one, since the by-laws do not authorize such a construct and such delegation without Lake Authority review or input (or even a process of appeal) would appear to violate the by-laws. The MOA cannot delegate authority in violation of by-laws, and such action is void. A reasonable cure to this problem would be to permit an appeal, as adopted in the Personnel Policies.

For these reasons among others, the MOU does not create a paramilitary structure in which the Authority has no power to supervise its LPO's. To the extent the expired MOU is read that way by any number of Delegates, it is not the view of DEEP or this law firm. Moreover, and as a matter of policy and local control, any such ambiguity should be removed, unless the Authority expressly wishes to cede such authority to the State. In that case, it is suggested that the By-laws be revised to clearly evince such a delegation and in turn, DEEP expressly agrees to such control.

The Keating memorandum suggests that the chain of command gives sole power to the Chief for all matters involving recruitment, hiring, termination etc. Mr. Keating suggests that the Chief conducts these duties in consultation with DEEP. However, the plain language of the MOU does not support this reading, and such a reading is inconsistent with the By-laws, which provide superior legal authority over the MOU in any personnel dispute, because the MOU is between the parties, but does not create substantive rights vis-à-vis employees or Lake Patrol Officers.

Finally, Conn. Gen. Stat. § 7-151b does not expressly nor implicitly vest the Commissioner with hiring authority. It vests him with the power to "appoint." This is akin to a certification process. It does not mean that the Commissioner hires CLA patrol employees.