

**Lake Lemon Conservancy District  
Board of Directors Meeting Minutes**  
Benton Township Senior Citizens Building  
June 8, 2011

The June 8, 2011 meeting of the Lake Lemon Conservancy District was held at the Benton Township Senior Citizens Building and was called to order by Chairman John Schell at 6:05 p.m.

**BOARD MEMBERS PRESENT:** John Schell, Marty Mann, Pam Dugan, Tim Specht, Tina Thrasher, Dennis Friesel, and Bruce Cassal. **ALSO PRESENT:** Bob Madden, Manager; Adam Casey, Board Recorder; and LLC D Freeholders (see attached sign-in sheet). **ABSENT:** Rachel Atz, CBU Representative

**I. OPENING COMMENTS (Schell)**

- Schell thanked all freeholders for attending the meeting.

**II. APPROVAL OF MEETING MINUTES (Schell)**

- Before the minutes were approved, a discussion between freeholders, board members, and management occurred regarding the adequacy of the monthly Board minutes. Madden agreed to investigate other options for recording the Board Meetings.
- Approval of May 18, 2011 Board Meeting Minutes.

**DUGAN MOTIONED TO APPROVE THE MAY 18, 2011 MINUTES WITH THE FOLLOWING CORRECTION. SCHELL AND DUGAN ABSTAINED ON THE MOTION TO REINSTATE FRIESEL AS BOARD TREASURER. THRASHER SECONDED THE MOTION. ALL “AYES.” MOTION CARRIED.**

**III. LAKE LEMON FLOOD PLAIN DISCUSSION (Kevin Enright, Monroe County Surveyor)**

- After the 2008 Monroe County historic flood, flood plain maps were updated, and as a result, some Lake Lemon land parcels previously exempt from flood plain insurance are now required to purchase flood insurance.
- Flood insurance for people within the flood plain is required by their mortgage company.
- If you feel your property should not be considered as being in the flood plain, you may obtain an elevation certificate and potentially be exempt from the new insurance requirements.
- Contact is Kevin Enright, Monroe County Surveyor, 812-349-2570.

#### **IV. TREASURER'S REPORT (Friesel)**

- A.** The board discussed Resolution 06-11-03, officially creating the Treasurer position as a Board Officer Position.

**FRIESEL MOTIONED TO APPROVE RESOLUTION 06-11-03; WHICH ESTABLISHES A TREASURER'S POSITION AS A BOARD OFFICER WITH SEVEN (7) PRIMARY DUTIES (SEE ATTACHED EXHIBIT A). SPECHT SECONDED THE MOTION. ALL "AYES". MOTION CARRIED.**

- B.** Dennis Friesel presented the budget as of May (see attached).

- Friesel discussed the Income and Expenses for the month of May, 2011.
- Friesel discussed the Allowance of Vouchers for the month of May, 2011.
- Friesel announced that an audit by the Indiana Department of Workforce Development will begin on June 16<sup>th</sup>, 2011. He will report results when audit report is received.

**FRIESEL MOTIONED TO APPROVE ALLOWANCE OF VOUCHERS FOR THE MONTH OF MAY, 2011. CASSAL SECONDED THE MOTION. ALL "AYES". MOTION CARRIED.**

#### **V. CONFLICT OF INTEREST ISSUES (Schell)**

- A.** Submittal of State Disclosure Form (Schell)

- Schell submitted his conflict of interest State Disclosure Form to the LLCD Board.
- Cassal stated that it is clear the state code has been violated numerous times, and only one form is currently being offered for submittal. Cassal would like to find out if a form should be submitted for each violation and if the form is correctly and sufficiently completed.
- Madden stated that he would submit form to the LLCD Attorney for review and recommendations.

- B.** Legal Opinion: Written Report Provided by Attorney Angela Parker (Cassal)

- Due to the lack of knowledge of the Conflict of Interest Indiana Code, the Chairman, Vice-chairman and LLCD Manager met with the LLCD Attorney, prior to this meeting, to discuss coming into compliance with the State Code as well as provide a written review of Director Mann's proposed conflict of interest rules (See Attached).

- Cassal reviewed and summarized the Attorney's statement. Major points included:
  1. The LLCD Board Members did nothing to prevent the conflict of interest initially.
  2. The LLCD Attorney refers to the mistake as harmless and unintentional.
  3. The LLCD Attorney does not know how the state or county will react to the lack disclosure form submittal.
  4. No other Board Members, besides Chairman Schell, can be held liable for the state disclosure form not being submitted.
- Freeholder and former board member Ritter said that when Schell initially voted for his own contract, she (Ritter) stated that Schell should recuse himself from voting on contracts involving his personal business.
- Mann handed out a memo (See Attached) in response to the LLCD Attorney's written opinion. Major points included:
  1. The tone of the letter shows no evidence of culpability.
  2. The LLCD Attorney was incompetent on this matter by not informing the board of the state disclosure form, especially, when she attended a 3 hour meeting primarily dealing with conflict of interest.
  3. The Attorney states that the error was unintentional and therefore harmless; board members Friesel and Cassal stated that ignorance of the law is not an excuse.
  4. The lake community has the right to decide if they want to allow a conflict of interest to happen.
  5. Board requested Madden to have LLCD Attorney respond to Mann's memo.

**C. Insurance Opinion: Lance Eberle, First Insurance Group (See Attached)**

- Eberle stated that the LLCD insurance policy is silent when dealing with conflict of interest; meaning there is coverage.
- Coverage of financial loss/penalties does not include criminal charges.
- Main exclusions to the policy include deliberate and willful violations of the law as well as unlawful gain of monetary benefit.

**Conflict of Interest Discussion Continued after Lance Eberle's insurance opinion**

**D. Proposed Conflict of Interest Standards (Rules)**

- Discussion about Mann's proposed rules were tabled until the July 16<sup>th</sup> Board meeting. However, discussion did continue on conflict of interest issues.
- Mann believes that as long as there is a conflict of interest with a board member, an attorney should be present at all board meetings to advise the Board on policy and protocol.
- Cassal stated that there will always be a conflict of interest as long as Schell is on the board because there is such an interweaving business relationship between the LLCD and the marina.

- Freeholder Ritter stated that there will always be the question is Director Schell acting in the best interest of the lake or his personal business. She also stated that she believed Schell should resign from the Board of Directors or at least from the chairman's position.
- Director Specht stated that even if Schell were to resign from the chairman position the conflict of interest would still not go away.
- Schell stated that he is acting on the behalf of the entire lake. He believes the amount of sediment being removed by the barge is minuscule and alternate methods of dredging are necessary. He has relationships with City of Bloomington officials and would like to discuss with them the re-opening of the 50 year lease agreement with the CBU and the selling of City of Bloomington land around the lake to fund additional dredging initiatives. Schell also stated that he asked Director Thrasher to talk with professionals about alternative dredging methods and grant sources.
- Ritter believes freeholders of the lake do not want to bring more development to the area. Currently in the 50 year lease there is a First Right to Purchase clause stating that any potential sale of real property must first be offered to the LLCDC at a fair market value. If the lease were to be re-opened this clause may be eliminated and the city would be free to sell their land to developers.
- Mann stated that the chairman should not be acting on behalf of the LLCDC Board without prior approval and disclosure of his plans. In response, Schell stated that LLCDC Attorney Parker broached the idea of selling city parcels. Vice-chairman Cassal affirmed that investigations into dredging, and the delegations of duties to board members, needs to be done in the light of day.
- Former board chairman Larry Polly stated that there is information on dredging methods in the office. Former board member Hobson said that the board spent over five years assessing dredging options and these efforts need not be duplicated or re-studied.
- Multiple freeholders stated that they were disappointed by the level of contention between board members. The appearance of impropriety is bad enough. Civility needs to be restored.

## **VI. MANAGER'S REPORT (Madden)**

### **A. Lake Lemon Restoration Project: Update**

- The first priority of dredging this spring has been focused on a channel from the lake side to the Possum Trot disposal site.

### **B. Aquatic Vegetation Control: Update**

- Currently there is minimal vegetation present on the lake. There are three primary reasons for this; 1. There was a good 2010-2011 winter draw down which exposed approximately 100-200 feet of shoreline around the lake to freezing temperatures. 2. It has been a very wet spring and as a result there are suspended particles in the water blocking light penetration to vegetation. 3. The chemical that was primarily used last year for Milfoil is a systemic chemical, which destroys the tissue from the inside out, and is effective for approximately two growing seasons.

**C. Lake Debris Removal: Update/ Financial Report (See Attached)**

- It was a very bad winter/spring for lake debris.
- Eight full barge loads of debris were picked up from the north east corner of the long causeway as well as other areas of the lake.
- Additionally, thirty stumps on the east end were removed.
- The barge and new thumb attachment played a critical role in debris removal and would have not been possible without the equipment.
- Gary Barrow Excavating Inc. will finish the debris removal in the northeast corner of the long causeway for \$1,500.00.

**D. Fireworks Show (July 3): Update**

- LLCD fireworks celebration is schedule for Saturday July 2<sup>nd</sup> with a rain date of Sunday July 3<sup>rd</sup>.
- Over \$3000.00 has been collected in fireworks donations to date.

**VII. Public Comment**

- Freeholder Ritter asked why the State Conservation Officers have been so prevalent on the lake this year? The LLCD Manager stated that with high water and many areas closed at Monroe Reservoir, more CO's have been available to patrol Lake Lemon.

**VIII. NEW BUSINESS / CORRESPONDENCE FOR FUTURE AGENDA**

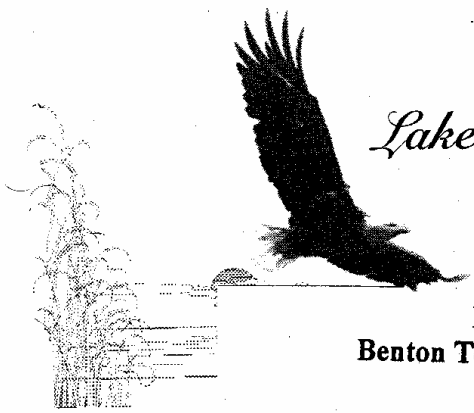
- The next LLCD Board Meeting and annual picnic is scheduled for Saturday July, 16<sup>th</sup>, 11:00 A.M. at the Riddle Point Park Shelter House.

**IX. ADJOURNMENT**

**THRASHER MOTIONED TO ADJOURN THE MEETING. CASSAL SECONDED THE MOTION. ALL "AYES." MOTION CARRIED. MEETING ADJOURNED AT 8:35 P.M.**

Meeting Minutes submitted by:

Adam Casey  
**Board Recorder**



# Lake Lemon Conservancy District

**MONTHLY MEETING**  
**Benton Township Senior Citizens Building**  
**6:00 PM**

Date: 6-8-11

Name	Lake Address	District
Ed Schoff	9950 Northshore Dr	7
Ronella Schoff	Unionville	7
Mary Echara	7679 N Tunnel R	1
Myra Jean	4174 Watson Rd	7
Mark Dennis	4032 Salmon Harbor Rd.	7
Darryl Baker	8039 LAKEVIEW	
<del>Ed Schoff</del>	7750 Willowood Dr	2
Shirley Beckman	Sail Away Lane	?
Les Wadzinski	9173 E. Northshore Dr.	
Art HALDEMAN	6790 E SPILLWAY RD	2
Jill Heiter	" "	2
Phyll	7111 Tunnel	1
Phyll	" "	1
Van Kory	7400 Tunnel	1
Marionita Kilm	7101 Tunnel	1
Larry Anderson	Polkey 7667 Tunnel	1
Dale Gentry	2708 Lakewood/Kill	2
Frank Berma	<del>Grass</del> Wildwood Dr.	4
Sherry Weber	4689 Point Cladawan Dr	6
William Weber	" "	6
Barry Dearidge	4186 Channel Rd. 47468	7
Danny Key	4145 Watson Rd	7
Linda HANIS	7580 N. Blue Heron Drive	
Susie Stephens	4304 Watson	7

7599 North Tunnel Road, Unionville, IN 47468  
Phone 812/334-0233 • Fax 812/335-0038



Date: 6-8-11

**7599 North Tunnel Road, Unionville, IN 47468**  
**Phone 812/334-0233 • Fax 812/335-0038**

### MAY 2011 Summary

**1. Income:** \$38,802

Watercraft/launch Permits	\$33,400
Lease Agreements:	\$1,635
Interest/Fish Tourney	\$130
Park Res/admissions	\$3140
Donations	\$485
other	\$12

**2. Expenses:** \$28,710

Salary/Benefits:	\$16,228
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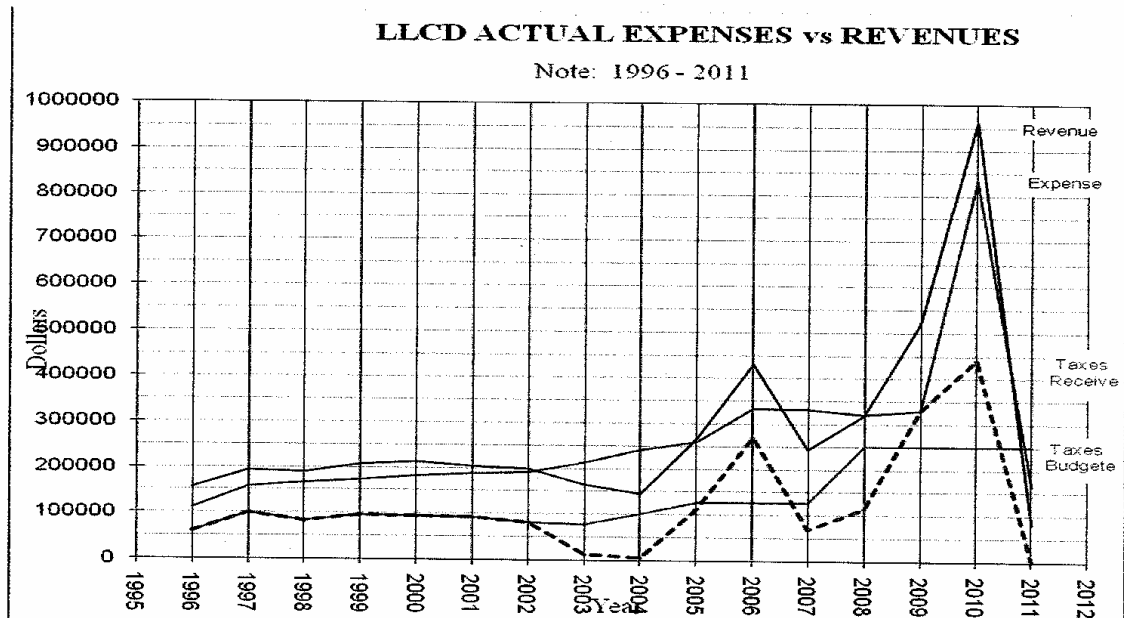
2011 Lake debris removal for May:	\$2,920
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Supplies:	\$4,758
Professional Services	\$2,623
Other services & charges	\$5,101

**3. May 2010/May 2011 Comparison:**

	<u>2010</u>	<u>2011</u>
Total revenue (-Taxes)	\$81,719	\$81,235
Total Expenses	\$106,848	\$164,582

**4. Revenue vs. Expenses:**



- 4. Investments:**
- a) \$55,848 in PBS Checking.
  - b) \$181,009 in 2 CD's for General Fund.
  - c) \$55,979 in five CD's for Cumulative Maintenance Fund.
  - d) \$4,942 Cumulative Maintenance Fund Savings..

**6. Indiana Workforce Development Audit for 2010.**  
Manpower employment audit



**LAKE LEMON CONSERVANCY**

**Financial Statements**

**For the Period Ending**

**January 1, 2011 thru May 31, 2011**

**(UNAUDITED)**

**Watkins Accounting**

**113 E. 19<sup>th</sup> Street**

**Bloomington, IN 47408**

LAKE LEMON CONSERVANCY

I have compiled the accompanying balance sheet for Lake Lemon Conservancy as of May 31, 2011 and the related statements of income for the period then ended, in accordance with standards established by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and accordingly, do not express an opinion or any other form of assurance on them.

Management has elected to omit substantially all of the disclosures and the statements of retained earnings and cash flows required by generally accepted accounting principles. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the company's financial position, results of operations and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

Shirley Watkins, CPA  
June 2, 2011

06/02/2011

LAKE DEMON CONSERVATION  
BALANCE SHEET  
May 31, 2011

ASSETS

CURRENT ASSETS

Petty Cash	\$	100.00	
PEOPLES STATE BANK		55,847.80	
Change Fund		200.00	
CD's General Fund		181,008.85	
CD's Cumulative Maint Fund		55,978.83	
Cumulative Maint. Savings		<u>4,942.02</u>	

TOTAL CURRENT ASSETS

\$ 298,077.50

PROPERTY AND EQUIPMENT

Trucks	\$	110,251.25	
Other		7,350.00	
Boats		209,750.00	
Other Fixed Assets		<u>99,501.66</u>	

TOTAL PROPERTY AND EQUIPMENT

\$ 426,852.91

TOTAL ASSETS

\$ 724,930.41  
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**LAKE LEMON CONSERVANCY**  
**BALANCE SHEET**  
**May 31, 2011**

10:55:43 AM

<b>LIABILITIES AND EQUITY</b>		
<b>CURRENT LIABILITIES</b>		
Fica & Federal Taxes Payable	\$	3,242.75
State and Co. Withholding Pay.		<u>619.39</u>
<b>TOTAL CURRENT LIABILITIES</b>	\$	<b>3,862.14</b>
<b>NON-CURRENT LIABILITIES</b>		
LONG-TERM DEBT NET OF CURRENT	\$	<u>169,721.36</u>
<b>TOTAL NON-CURRENT LIABILITIES</b>	\$	<b>169,721.36</b>
<b>EQUITY</b>		
General Fund	\$	569,950.09
Encumbered Fund		55.00
Cumulative Maintenance Fund		38,441.47
NET INCOME (LOSS)		<u>(57,099.65)</u>
<b>TOTAL EQUITY</b>	\$	<u><b>551,346.91</b></u>
<b>TOTAL LIABILITIES AND EQUITY</b>	\$	<u><u><b>724,930.41</b></u></u>

## LAKE LEMMON CONSERVANCY

## INCOME STATEMENT

For The Period

	May 01, 2011 To May 31, 2011	January 01, 2011 To May 31, 2011
<b>SALES</b>		
Watercraft Permits	\$ 29,236.00	\$ 39,410.00
Launch Fees	4,164.00	7,197.00
Marina & Club Fees	0.00	2,000.00
Sublease & Lake Access Fees	1,635.00	24,415.00
Interest	80.60	904.44
Grants & Donations	485.00	520.00
Fishing Tournament	50.00	750.00
Park Reservations	125.00	2,875.00
Park Admission Fees	3,015.00	3,015.00
Other	11.47	49.71
Total SALES	\$ 38,802.07	\$ 81,136.15
Total GROSS PROFIT	\$ 38,802.07	\$ 81,136.15
<b>GENERAL &amp; ADMINISTRATIVE</b>		
Manager	\$ 4,409.42	\$ 22,047.10
Vica	1,066.83	3,534.26
State Unemployment Tax	0.00	100.75
Retirement	0.00	3,593.38
Health Insurance	1,215.14	5,767.22
Life Insurance	0.00	1,263.00
Gate Attendant	1,409.13	2,024.13
Park Maintenance Technician	707.00	707.00
Lake Biologist	1,612.50	4,037.50
Dredger	1,952.00	1,952.00
Dredger (other)	1,952.00	10,160.00
Assistant Dredger	936.00	936.00
Assistant Dredger (Other)	968.00	4,336.00
Season & Launch Permits	0.00	1,148.33
Daily Permits	0.00	209.81
Receipt/Tickets Books	0.00	344.89
Printer, Copier & Computer Sup	0.00	498.67
Miscellaneous-Other	58.38	384.89
Postage	178.51	487.74
General Business Supplies	0.00	233.47
Regular Gas	225.00	1,721.01
Diesel	3,362.79	3,897.73
Building & Grounds	170.00	529.17
Boat/Weed Harvester/Truck	2.99	22.36

**LAKE LEMON CONSERVANCY  
INCOME STATEMENT  
For The Period**

	May 01, 2011 To May 31, 2011	January 01, 2011 To May 31, 2011
Dredging Supplies	\$ 0.00	\$ 1,275.56
Radio/Communication Equipment	520.00	520.00
Signs & Nautical Markers	240.00	1,830.00
Accounting Services	450.00	2,250.00
Grass	1,812.50	1,812.50
Attorney	360.00	1,845.00
Consulting Engineer	0.00	100.00
Other Prof/Secretarial Service	0.00	224.60
Phone, LDT, Pager, E-Mail	313.56	1,416.55
Subscriptions	49.00	138.70
Ads	0.00	165.10
Other	393.97	1,126.67
Insurance	0.00	25,164.00
Electric	429.95	2,729.90
Water	32.18	231.37
Trash	86.33	161.33
Pump Holding Tank	0.00	75.00
Building & Grounds	3,190.00	4,594.00
Boat	0.00	408.00
Dredging Equipment Maintenance	90.00	90.00
Equipment Rental	0.00	818.50
6% Marina Permit Sales	516.66	516.66
Dam/Spillway Inspection	0.00	222.50
Disposal Site Preparation	0.00	10,991.68
Debt Service (Dredging Equip.)	0.00	4,004.63
Other Services and Charges	0.00	12.14
Ramp Repairs	0.00	5,575.00
Total GENERAL & ADMINISTRATIVE	\$ 28,709.84	\$ 138,235.80
Total NET OPERATING INCOME (LOSS)	\$ 10,092.23	\$ ( 57,099.65)
NET INCOME (LOSS) BEFORE TAX	\$ 10,092.23	\$ ( 57,099.65)
NET INCOME (LOSS)	\$ 10,092.23 =====	\$ ( 57,099.65) =====

**LAKE LEMON CONSERVANCY DISTRICT  
INCOME OVER EXPENDITURES SUMMARY  
GENERAL FUND  
For the One Month Ended May 31, 2011**

	CURRENT MONTH	2011 ACTUAL	2011 BUDGET	Positive (Negative) Budget Variance
<b>REVENUES</b>				
4000 Watercraft Permits	\$ 29,236.00	39,410.00	\$ 98,000.00	\$ (58,590.00)
4010 Launch Fees	4,164.00	7,197.00	14,500.00	(7,303.00)
4020 Marina & Club Fees	-	2,000.00	8,000.00	(6,000.00)
4030 Sublease & Lake Access Fees	1,635.00	24,415.00	25,000.00	(585.00)
4040 Property Tax - Brown Co.	-	-	50,000.00	(50,000.00)
4050 Property Tax - Monroe Co.	-	-	200,000.00	(200,000.00)
4060 Interest	80.60	904.44	500.00	404.44
4070 Grants & Donations	465.00	520.00	5,800.00	(5,280.00)
4080 Fishing Tournament	50.00	750.00	700.00	50.00
4090 Park Reservations	125.00	2,875.00	2,500.00	375.00
4100 Park Admission Fees	3,015.00	3,015.00	22,000.00	(18,985.00)
4110 Concessions	-	-	-	-
4120 Other	11.47	49.71	-	49.71
4130 Dredging/Rip-Rap Income	-	-	10,000.00	(10,000.00)
4140 Dredging Equipment Loan Proceeds	-	-	-	-
<b>TOTAL REVENUES</b>	<b>38,802.07</b>	<b>81,136.15</b>	<b>437,000.00</b>	<b>(355,863.85)</b>
<b>EXPENDITURES</b>				
<b>WAGES &amp; BENEFITS</b>				
<b>SALARIES &amp; BENEFITS</b>				
6000 Manager	4,409.42	22,047.10	52,913.00	30,865.90
6010 FICA	1,066.83	3,534.26	9,150.00	5,615.74
6020 State Unemployment Tax	-	100.75	588.00	487.25
6030 Retirement	-	3,593.38	7,098.00	3,504.62
6040 Health Insurance	1,215.14	5,767.22	14,000.00	8,232.78
6050 Life Insurance	-	1,263.00	1,265.00	2.00
<b>TOTAL SALARIES &amp; BENEFITS</b>	<b>6,691.39</b>	<b>36,305.71</b>	<b>85,014.00</b>	<b>48,708.29</b>
<b>HOURLY WAGES</b>				
6070 Gate Keeper	1,409.13	2,024.13	15,000.00	12,975.87
6080 Seasonal Labor	-	-	-	-
6090 Park Maintenance Technician	707.00	707.00	5,600.00	4,893.00
6100 Lake Patrol	-	-	4,800.00	4,800.00
6110 Lake Biologist	1,612.50	4,037.50	12,500.00	8,462.50
6111 Dredger	1,952.00	1,962.00	16,000.00	14,048.00
6112 Dredger(Other)	1,952.00	10,160.00	3,200.00	(6,960.00)
6113 Assistant Dredger	936.00	936.00	8,000.00	7,064.00
6114 Assistant Dredger(Other)	968.00	4,336.00	1,600.00	(2,736.00)
<b>TOTAL HOURLY WAGES</b>	<b>9,536.63</b>	<b>24,182.63</b>	<b>66,700.00</b>	<b>42,547.37</b>
<b>GRAND TOTAL WAGES &amp; BENEFITS</b>	<b>16,228.02</b>	<b>60,488.34</b>	<b>151,714.00</b>	<b>91,255.66</b>
<b>SUPPLIES</b>				
<b>OFFICE SUPPLIES</b>				
6120 Season & Launch Permits	-	1,148.33	1,000.00	(148.33)
6130 Daily Permits	-	209.81	200.00	(9.81)
6140 Receipt/Ticket Books	-	344.89	300.00	(44.89)
6150 Checks	-	-	200.00	200.00
6160 Printer, Copier & Computer Sup	-	498.67	500.00	1.33
6170 Miscellaneous/Other	58.38	384.89	800.00	415.11
6180 Postage	178.51	487.74	1,500.00	1,012.26
6190 General Business Supplies	-	239.47	500.00	266.53
<b>TOTAL OFFICE SUPPLIES</b>	<b>236.89</b>	<b>3,307.80</b>	<b>5,000.00</b>	<b>1,692.20</b>
<b>OPERATING SUPPLIES</b>				
6200 Regular Gas	225.00	1,721.01	3,500.00	1,778.99
6210 Diesel, Oil, Grease	3,362.79	3,897.73	10,000.00	6,102.27
6220 Janitorial Supplies	-	-	-	-
6230 Medical Supplies	-	-	-	-
<b>TOTAL OPERATING SUPPLIES</b>	<b>3,587.79</b>	<b>5,618.74</b>	<b>13,500.00</b>	<b>7,881.26</b>
<b>REPAIR &amp; MAINTENANCE SUPPLIES</b>				
6240 Building & Grounds	170.00	529.17	3,000.00	2,470.83
6250 Boats, Trucks	2.99	22.36	2,000.00	1,977.64
6251 Dredging Supplies	-	1,275.56	4,000.00	-
6252 Rip Rap/Erosion Control	-	-	10,000.00	10,000.00
<b>TOTAL REPAIR &amp; MAINT SUPPLIES</b>	<b>172.99</b>	<b>1,827.09</b>	<b>19,000.00</b>	<b>17,172.91</b>

**LAKE LEMON CONSERVANCY DISTRICT  
INCOME OVER EXPENDITURES SUMMARY  
GENERAL FUND  
For the One Month Ended May 31, 2011**

	CURRENT MONTH	2011 ACTUAL	2011 BUDGET	Positive (Negative) Budget Variance
<b>OTHER SUPPLIES</b>				
6270 Boat Equipment	-	-	300.00	300.00
6280 Radio Equipment	520.00	520.00	500.00	(20.00)
6290 Signs & Nautical Markers	240.00	1,890.00	1,800.00	(30.00)
<b>TOTAL OTHER SUPPLIES</b>	<u>760.00</u>	<u>2,380.00</u>	<u>2,600.00</u>	<u>250.00</u>
<b>GRAND TOTAL SUPPLIES</b>	<u>4,757.57</u>	<u>13,103.53</u>	<u>40,100.00</u>	<u>26,996.37</u>
<b>SERVICES &amp; OTHER CHARGES</b>				
<b>PROFESSIONAL SERVICES</b>				
6300 Accounting Services	450.00	2,250.00	5,400.00	3,150.00
6310 Grass	1,812.50	1,812.50	18,000.00	16,187.50
6320 Attorney	360.00	1,845.00	7,000.00	5,155.00
6325 Fish Management Survey	-	-	-	-
6330 Consulting Engineers	-	100.00	14,000.00	13,900.00
6350 Other Services	-	224.80	500.00	275.40
<b>TOTAL PROFESSIONAL SERVICES</b>	<u>2,622.50</u>	<u>6,232.10</u>	<u>44,900.00</u>	<u>38,667.90</u>
<b>COMMUNICATION &amp; TRANSPORTATION</b>				
6370 Phone, LDT, Pager, Voice Mail	313.56	1,416.55	3,400.00	1,983.45
6380 Travel	-	-	200.00	200.00
6390 Hotel	-	-	200.00	200.00
6400 Meals	-	-	100.00	100.00
6410 Subscriptions/Memberships	48.00	138.70	300.00	161.30
<b>TOTAL COMMUNICATION &amp; TRANSPORTATION</b>	<u>362.56</u>	<u>1,555.25</u>	<u>4,200.00</u>	<u>2,644.75</u>
<b>PRINTING &amp; ADVERTISING</b>				
6420 Newsletter	-	-	800.00	800.00
6430 Ads(Legal Notices)	-	185.10	300.00	134.90
6440 Ballots & Other Printing	393.97	1,126.67	1,500.00	373.33
<b>TOTAL PRINTING &amp; ADVERTISING</b>	<u>393.97</u>	<u>1,291.77</u>	<u>2,600.00</u>	<u>1,308.23</u>
<b>INSURANCE</b>				
6450 Liab, Bldg, Equip, Work Comp	-	25,184.00	35,000.00	9,836.00
<b>TOTAL INSURANCE</b>	<u>-</u>	<u>25,184.00</u>	<u>35,000.00</u>	<u>9,836.00</u>



**LAKE LEMON CONSERVANCY DISTRICT  
INCOME OVER EXPENDITURES SUMMARY  
GENERAL FUND  
For the One Month Ended May 31, 2011**

	CURRENT MONTH	2011 ACTUAL	2011 BUDGET	Positive (Negative) Budget Variance
<b>UTILITY SERVICES</b>				
6460 Electric	429.95	2,729.90	5,000.00	2,270.10
6470 Water	32.18	231.37	600.00	368.63
6480 Trash	86.33	161.33	1,000.00	838.67
6490 Port-O-Lets	-	-	2,400.00	2,400.00
6500 Pump Holding Tank	-	75.00	800.00	725.00
<b>TOTAL UTILITY SERVICES</b>	<b>548.46</b>	<b>3,197.60</b>	<b>9,800.00</b>	<b>6,602.40</b>
<b>REPAIR &amp; MAINTENANCE</b>				
6510 Building & Grounds	3,190.00	4,594.00	4,500.00	(94.00)
6520 Boat & Harvester	-	408.00	1,000.00	592.00
6530 Truck	-	-	1,500.00	1,500.00
6540 Sluice Gate Inspection	-	-	-	-
6541 Dredging Equipment	90.00	90.00	7,000.00	6,910.00
6542 Equipment Rental	-	818.50	3,500.00	2,681.50
<b>TOTAL REPAIR &amp; MAINTENANCE</b>	<b>3,280.00</b>	<b>5,910.50</b>	<b>17,500.00</b>	<b>11,589.50</b>
<b>DEBT SERVICE</b>				
6550 Operating Loan	-	-	-	-
<b>TOTAL DEBT SERVICE</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>OTHER SERVICES &amp; CHARGES</b>				
6560 Water Testing	-	-	3,800.00	3,800.00
6570 Lake Weed Treatment	-	-	60,000.00	60,000.00
6580 Erosion Control/Matching Funds	-	-	-	-
6590 Contingency Funds 10%	-	-	10,000.00	10,000.00
6600 6% Marina Permit Sales	516.66	516.66	2,300.00	1,783.34
6610 Cumulative Maintenance Fund	-	-	5,000.00	5,000.00
6620 Dam/Spillway Inspection	-	222.50	-	(222.50)
6630 Spillway Repairs (Cum Maint Fund)	-	-	1,500.00	1,500.00
6640 Soil Testing IDEM	-	-	-	-
6650 Dredging Engineering	-	-	-	-
6661 Disposal Site Preparation	-	10,991.68	30,000.00	19,008.32
6662 Debt Service - Dredging Loan	-	18,995.37	46,000.00	27,004.63
Silt Container, Barge Assembly etc	-	-	-	-
Debt Service (Dredging Loan-Int.)	-	4,004.63	-	(4,004.63)
6680 Other Services and Charges	-	12.14	3,000.00	2,987.86
6681 Fireworks	-	-	7,000.00	7,000.00
6682 Ramp Repairs	-	5,575.00	6,000.00	425.00
<b>TOTAL OTHER SERVICE &amp; CHGS</b>	<b>516.66</b>	<b>40,317.98</b>	<b>174,600.00</b>	<b>134,282.02</b>
<b>GRAND TOTAL SERVICES &amp; CHARGES</b>	<b>7,724.15</b>	<b>83,669.20</b>	<b>288,600.00</b>	<b>204,930.80</b>
<b>OTHER CAPITAL OUTLAYS</b>				
<b>MACHINERY &amp; EQUIPMENT</b>				
6690 Office Equipment	-	-	0.00	-
6700 Computer Equip.	-	-	0.00	-
6701 Barge	-	-	0.00	-
6702 Push Boat	-	-	0.00	-
6703 Excavator & Buckets	-	-	0.00	-
6704 Off Road Truck	-	7,350.00	0.00	(7,350.00)
6705 Utility Truck	-	-	0.00	-
6710 Boat Dock	-	-	0.00	-
6720 Utility Vehicle	-	-	-	-
<b>TOTAL MACHINERY &amp; EQUIPMENT</b>	<b>-</b>	<b>7,350.00</b>	<b>-</b>	<b>(7,350.00)</b>
<b>OTHER CAPITAL OUTLAYS</b>				
6730 Patrol Boat/Trailer	-	-	-	-
6740 Weed Harvester	-	-	-	-
6750 Truck Payments 12 mos.	-	-	-	-
6760 Other Capital Outlays	-	-	-	-
<b>TOTAL OTHER CAPITAL OUTLAYS</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>GRAND TOTAL CAPITAL EXPENDITURES</b>	<b>-</b>	<b>7,350.00</b>	<b>-</b>	<b>(7,350.00)</b>
<b>TOTAL EXPENDITURES BUDGET</b>	<b>28,709.84</b>	<b>164,581.17</b>	<b>480,414.00</b>	<b>315,832.83</b>
<b>Expenditures over Revenue</b>	<b>\$ 10,092.23</b>	<b>\$ (83,445.02)</b>	<b>\$ (43,414.00)</b>	<b>\$ (40,031.02)</b>

## **EXHIBIT A**

### **LLCD Board Treasurer Duties**

1. Presents and explains the proposed budget at all appropriate public meetings.
2. Signs all state budget documents on behalf of District.
3. Prepares and presents monthly budget updates and Report of Claims at Board meetings.
4. Approves emergency purchases or services on behalf of the Board.
5. Monitors District investments and recommends to Board new investment deposits, withdrawals, and/or renewals.
6. Coordinates with financial clerk in the submittal of all End of Year Reports to the State Board of Accounts (SBOA) and the State Department of Local Government Finance (DLGF).
7. Represents Board with the State Board of Accounts on bi-annual audits. Prepares and signs District's response to SBOA audits.

June 3, 2011

*Via Email Only*

Bob Madden  
Lake Lemon Conservancy District  
7599 North Tunnel Road  
Unionville, IN 47468

*This correspondence is attorney work product and is confidential and  
protected from disclosure by the attorney-client privilege.  
This correspondence is intended for the named recipient and the  
elected directors of the LLCD only.*

RE: LLCD Conflict of Interest Policy  
Indiana Criminal Conflict of Interest Statute  
Our File No.: 11820-42

Dear Bob:

I am writing to respond to the Lake Lemon Conservancy District's questions concerning the District's conflict of interest policy, and Indiana's criminal conflict of interest statute, and the proposed policies, as offered by Director Marty Mann. I will address each issue, in order.

1. **Should John Schell, a board member, have voted to approve the contracts between LLCD and Schell Marina, LLC (or any other matters for which he or Schell Marina, LLC had a financial interest)?**

The LLCD adopted a Conflict of Interest policy in October, 2007. Under LLCD's adopted conflict of interest policy, the answer is no. LLCD's policy states that the Board may enter into a contract with one of its members only if that person is excluded from the discussion and vote on the contract. [LLCD Conflict of Interest Policy, Section 6, subpart 2.] LLCD's minutes from its March 2009 and March 2010 meetings show that John Schell disclosed his ownership of Schell Marina, LLC as a conflict. Thus, during the meetings of December 2009 and December 2010, he should not have participated in the discussion or voted to approve the contract between LLCD and Schell Marina, LLC. Nor should he have discussed or voted on Schell Marina, LLC's sale of LLCD boat permits or any other matter for which he or his business stood to gain a pecuniary benefit.

However, at the time of the votes, the board took no steps to enforce the policy. The December 2009 and December 2010 minutes do not reflect any objection by a board member to Schell's

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participation in the votes. LLCD's policy squarely applied under the circumstances. The policy cannot be effective if the board does not enforce it.

The prohibition against Schell participating in votes that affect North Shore Marina comes from LLCD's own policy, not from state law. LLCD's policy cannot be effective, however, unless it is enforced by the board. The Board may discuss procedures by which it "polices" its policies. Those could include objecting to the prescribed activity in the meeting and a vote of the non-affected board members to disallow or void a vote of a conflicted member. To my knowledge, there are no procedures set out by the LLCD Board that addresses enforcement of its policies in this situation.

Indiana's conflict of interest statute, Ind. Code § 35-44-1-3,<sup>i</sup> (discussed below) is silent on whether a conflicted director may participate in these types of votes. The statute says only that a "public servant"<sup>iii</sup> commits a Class D felony if he *knowingly* has a pecuniary interest in a contract with a "governmental agency"<sup>iii</sup> and fails to file a disclosure statement, all as more specifically set forth in the statute. The law is silent about whether the public servant may participate in the discussion or a vote on a matter.

**2. What effect does the failure to follow LLCD's conflict of interest policy have on whether LLCD's past actions should stand (as far as LLCD's own internal operations are concerned)?**

None. No board member objected at the time of the votes. Neither did any freeholder. The votes to approve the agreements with Schell Marina, LLC were unanimous. They would have passed with or without Schell's vote. Given the circumstances, it is too late now to overturn the board's past votes.

I do not know whether LLCD has adopted particular governance rules, such as Robert's Rules of Order, to govern its meetings. The By-Laws state: "Establishment of specific 'rules of order' will be deferred for later action." [LLCD By-Laws, Article IX.] I do not know whether that ever happened. Nevertheless, standard rules of parliamentary procedure generally require any person who has an objection to the manner in which a vote is being taken to raise that objection at the time of the vote. Otherwise, the objection is waived and the vote stands. Because no one objected to Schell's participation in the discussions and votes, the votes stand. Even if any such objection were raised belatedly at this time, it arguably would be irrelevant. The votes in favor of the agreements with Schell Marina, LLC were unanimous. Thus, even if Schell had not voted, the motions to approve the agreements still would have passed. The law refers to this circumstance as "harmless error," as it does not, by itself, invalidate the otherwise unanimous action of the Board.

Moreover, if any board member were to challenge the prior votes at this time, there would be a danger in doing so. The proper procedural mechanism to challenge a past vote is to move to revise, rescind, and/or amend the vote. But the contract with Schell Marina, LLC was already signed three months ago. Thus, if any board member—or any other person for that matter—

were to take any such action, he or she would place LLCD at risk of breaching a written contract with Schell Marina, LLC.

**3. What is the exposure to liability that results from a failure to follow Indiana's criminal conflict of interest statute?**

**a. Criminal liability**

Indiana's criminal conflict of interest statute requires a public servant to file a Disclosure Statement with the State Board of Accounts and the County within fifteen (15) days after the board takes final action on any agreement in which a financial or pecuniary benefit is derived. Ind. Code § 35-44-1-3(d). The statute is found under codified law entitled "Offenses Against Public Administration" and imposes potential criminal penalties for a person who "*knowingly or intentionally*" fails to follow the law. A determination of prosecutorial action, if any, that would or could result to an individual person is beyond the scope of the opinion letter and would have to be determined by the proper authorities, upon investigation and review. No opinion regarding that matter is included here.

A Director's failure to abide by the conflict of interest statute should not, however, expose the board (or any board member) to criminal liability. The statute itself does not prohibit LLCD from entering into a contract with Schell or any other person or business. In other words, the contract itself is not the problem. Rather, the problem relates to the filing of the state-required form. When that form is not filed, the statute contemplates action against the individual, not to the governmental entity or other board members. Ind. Code § 35-44-1-3(a).

**b. Civil liability**

Under the Conservancy District Act, whenever the board fails to fulfill one or more of its duties, it can be subject to an action for mandate. Ind. Code § 14-33-5-24. An action for mandate—in its simplest definition—is a lawsuit to force the board to do what it otherwise should be doing on its own. It is possible that a freeholder (or other person) could file an action for mandate to force the board to accept the state-required Disclosure Statement from Schell. We do not believe that that is likely to happen, however. Actions for mandate generally do not call for an award of monetary damages. Thus, there is little incentive for anyone to file a lawsuit to force the board to jump through these hoops—especially given that the contract with Schell Marina, LLC has already been signed and the vote to approve it was unanimous.

The question of whether any person could pursue a civil claim for some form of money damages against LLCD would require considerably more effort. Under both the state conflicts of interest statute and LLCD's policy, there is nothing inherently wrong about LLCD's contract with Schell Marina, LLC, as approved by the Board. Moreover, while Schell failed to file the state's Disclosure Statement, each year he signed LLCD's own disclosure form, which served essentially the same purpose. He made all board members and freeholders aware of his conflict.

Thus, in order to impose damages on LLCD, any potential plaintiff would need to prove more than just the mere fact that LLCD signed a contract with Schell. Rather, it seems that the plaintiff would need to allege, for example, that the board members engaged in a fraud or conspired to funnel money to Schell improperly or that he gained undue advantage as a board member in gaining a contract with the District. We are not aware that such facts exist. As far as we know, the board dealt with the contracts with Schell on an "arms-length basis" and the board would have signed the Agreements with him regardless of whether he was or was not a board member and, in fact, historically has done so with the Marina.

I do not mean to imply, by any means, that LLCD is immune from any potential lawsuit. A person could file a lawsuit against LLCD at any time—rightly or wrongly. Even weak lawsuits can require considerable time and resources to defend. But if the board members acted in the best interests of the District, and that the Board would have reached the same results regardless of whether Schell participated in the vote that affected Schell Marina, LLC, then that LLCD's exposure to liability is limited.

**4. Marty Mann presented five proposed rules to deal with conflicts of interest, which were attached to LLCD's April 2011 minutes. What is the legality of these rules?**

There is little that is inherently "legal" or "illegal" about Mann's proposed rules. The Board is free to adopt or reject the proposals the same manner that it would adopt any other rules or policies that govern the District. The Board should keep in mind its fiduciary duty to act in the best interest of the LLCD and to adopt policies that promote the best interests of the District. And, the Board should be further mindful of providing clear definitions and implementing policies with consistency to avoid future concerns in effect and application. The Conservancy District Act specifically gives the board the power to conduct its business through adopting policies to govern its operations. Ind. Code § 14-33-5-20; *see also* Ind. Code § 14-33-6-13. As has been my practice in advising the LLCB, our firm provides advice regarding legal matters that are specifically referred to us, but policy questions are properly decided by the LLCD's elected representatives.

With that in mind, I will now comment briefly on Mann's proposals.

- Proposed Rule 1: When a new board member joins the board with a conflict that already exists, this proposed rule calls for the board to evaluate the situation and determine whether LLCD's business dealings with the new member "should continue." It is fine for the board to establish a method for evaluating a new member's pre-existing conflicts. However, the board may not always unilaterally determine that it should not "continue" an existing deal. The board should not, and may not in some situations, unilaterally terminate contracts that it has already executed. The proposed rule prohibits discussion by the conflicted Board member with the Board, subcommittees, or with constituents. I

would question the propriety or prohibiting discussion of any and every form by the conflicted board member on two grounds:

- 1.) The Board members' potentially protected "right" to be heard on issues that affect him or her and a prohibition on discussion with virtually *anyone* may be construed as overly-broad and capricious; and
  - 2.) the ability and perhaps, obligation, of the Board to gather *all* necessary and pertinent information about a particular contract or service when the person involved is barred from discussing it in any forum.
- Proposed Rule 2: This proposed rule prohibits the Board from doing business with any board member or employee under almost any circumstances, with the sole exception being if the board determines that it is "not practical" to contract with anyone else. Thus, this proposed rule is much stricter than LLCD's existing policy, which uses a "best interests of LLCD" standard. I see some potential difficulty with "indirect" business as the term is undefined and could create inconsistent application or effect. The existing policy allows for greater flexibility on decision-making by the Board but, again, that is a policy decision of the Board. The statute, for example, requires disclosure but does not reach so far as to prohibit such contracts or purchases altogether.
  - Proposed Rule 3: LLCD's existing policy prohibits board members from discussing or voting on matters for which they have a "proprietary interest." This proposed rule is broader. It would prohibit board members from discussing or voting on any matters that potentially "compete with" or "directly affect" the board member's business. With this language, the scope of the proposed rule is so broad that it could potentially be difficult to apply in actual practice. Also, like Proposed Rule 1, this proposed rule prohibits board members from speaking to "constituents" in certain circumstances, which—even if the board were to determine is a desirable goal—could be nearly impossible to enforce, in addition to the comments above.
  - Proposed Rule 4: In situations in which the board does business with one of its members, this proposed rule would require the Board Treasurer (or other designee) to oversee all "payments or receipts" between that person and LLCD. There is nothing "illegal" about this. I would note that the proposed policies reference "individual" but that is not defined. Does that include a business form, such as an LLC or corporation in which an individual board member has an ownership interest? Again, adoption, implementation and enforcement of the policies require clear, consistent definition and application.
  - Proposed Rule 5: This proposed rule would require board members to disclose their ownership of any development properties on the Lake. Section 4, subpart 1 of LLCD's existing policy may arguably require that disclosure. While the proposed rule requires disclosure, but it does not actually create a policy that addresses the issue, once disclosed.

It is incumbent on the Board (and individual directors) that they act with prudence and in the best interest of the District on all matter brought before it. I'm not clear on the Board's role in *knowing* about a director's personal investments, such as ownership of development land, and then enacting decisions in a case-by-case basis to regulate or control that activity in some fashion. The proposed policy is vague as to any actual policy implementation so it is difficult to determine the potential legal issues that would arise.

**5. What should be done if the board wishes to remove a director from the Board?**

The Conservancy District Act does not contain a specific mandate as to how a board may remove one of its own members or whether it can at all. Instead, it states that a board may enact rules and by-laws to govern its own affairs. Ind. Code § 14-33-5-20; *see also* Ind. Code § 14-33-6-13. LLCD's By-Laws do not currently include any reference to the removal of board members. The By-Laws allow for amendment upon the vote of two-thirds of the directors. [LLCD By-Laws, Article X.] Thus, if the board wishes to take steps to remove a director, it must first amend its current By-Laws to set forth a procedure to govern the removal of directors. In addition, because directors are elected by the freeholders, any policy must also include consideration of the election procedures that have been approved by the supervising Court. Given the sensitive nature and possible ramifications of removing an elected official, if the Board wishes to set forth a procedure for doing so, I would recommend that the board both amend the Bylaws and Election Procedures and, once approved by the Board, submit the same to the supervising Court for review and approval. This topic would require additional research and consideration by counsel upon direction by the Board so is not fully addressed by this letter.

**6. Procedure recommended regarding the Conflict of Interest statute.**

The LLCD currently requires annual disclosure by its Directors on conflict of interests. Since adopted by the Board in 2007, this has been the policy and presumably, the practice. The statute (IC 35-44-1-3) requires that a "public servant" complete the prescribed disclosure form and file it with the State Board of Accounts and the County if the person meets the statutory criteria. (IC 35-44-1-3(c)(3)). Procedurally, if a Director is engaged in a contract or purchase with the LLCD in which the Director has a pecuniary interest or derives a profit, the form should be submitted to the LLCD Board and should be "accepted by the governmental entity in a public meeting" prior to final action on the contract or purchase (IC 35-44-1-3(d)(5)). Then, within 15 day after the final action of the Board, the form should be remitted to the State Board of Accounts and the clerk of the court. It would be my suggestion that once the Board implements the statutory process, the Lake Manager be charged with ensuring the procedure is followed and form remitted so that a proper record is maintained.



June 3, 2011  
Page 7

Please let us know if you have any further questions on these matters.

Very truly yours,

/s/ Angela F. Parker

Angela F. Parker  
Gregory A. Bullman

AFP/GAB/jp  
330491/ 11820-42

<sup>i</sup> The Indiana criminal code defines the crime of "conflict of interest" as follows:

- (a) A public servant who knowingly or intentionally:
  - (1) has a pecuniary interest<sup>1</sup> in; or
  - (2) derives a profit from;a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D felony.

Ind. Code § 35-44-1-3.

<sup>ii</sup> Indiana's criminal conflict of interest statute defines a "public servant" as follows:

- "Public servant" means a person who:
- (1) is authorized to perform an official function on behalf of, and is paid by, a governmental entity;
  - (2) is elected or appointed to office to discharge a public duty for a governmental entity;
- or
- (3) with or without compensation, is appointed in writing by a public official to act in an advisory capacity to a governmental entity concerning a contract or purchase to be made by the entity.
- The term does not include a person appointed by the governor to an honorary advisory or honorary military position.

Ind. Code § 35-41-1-24.

<sup>iii</sup> Indiana's criminal conflict of interest statute defines "governmental entity" as:

- "Governmental entity" means:
- (1) the United States or any state, county, township, city, town, separate municipal corporation, special taxing district, or public school corporation;
  - (2) any authority, board, bureau, commission, committee, department, division, hospital, military body, or other instrumentality of any of those entities; or
  - (3) a state-assisted college or state-assisted university.

Ind. Code § 35-41-1-12. We have looked closely at LLCD's status under similar definitions in the past. In prior litigation, we argued that LLCD does not fit the definition of "governmental unit" under the Home Rule Act. But the law frequently defines conservancy districts as "special taxing districts." *In re Petition for Establishment of Millpond Conservancy Dist.*, 891 N.E.2d 54 (Ind. Ct. App. 2008) ("A conservancy district is a special taxing district created for local public improvement."). Thus, LLCD fits the definition of "governmental entity" under this statute.



VIA EMAIL ONLY

Bob Madden  
Lake Lemon Conservancy District  
7599 N. Tunnel Rd.  
Unionville, IN 47468

***This correspondence is intended for the named recipient and the elected directors of the LLCD only and is confidential.***

RE: LLCD Conflict of Interest – Insurance Opinion

Dear Bob:

I am writing to respond to the Conservancy's questions concerning its Directors and Officers coverage and how it would respond to suits or claims relating to a conflict of interest.

To begin, I must first state that the final determination of coverage is made by the adjustor based on the facts on each individual suit or claim. Due to the large amount of variables that can enter into a suit or claim, I will not be able to offer an opinion on whether or not coverage would apply, but rather whether there would be any coverage concerns as it relates to conflict of interest.

**1. Does coverage exists in a suit involving a conflict of interest or where a conflict of interest exists?**

Overall, the Directors and Officers policy is silent on this issue. The insuring agreement under Section I of your policy states:

*"We will pay on behalf of the "insured" all "loss" which they shall be legally obligated to pay resulting from any "claim" first made during the "policy period", or any "extended reporting period" included in or endorsed to the policy for a "wrongful act:"*

It furthers goes on to include the following definitions un Section IV of the policy:

- A. "Claim" means
- a. A written demand for monetary damages or non-monetary relief
  - b. A civil proceeding commenced by filing of a complaint
  - c. A formal administrative or regulator proceeding commenced by filing of charges, formal investigative order or similar document

1405 N. College Avenue Bloomington, Indiana 47404-2417 Phone 812-331-3230 Fax 812-331-3233  
[www.figprotects.com](http://www.figprotects.com)

- d. An arbitration, mediation or similar alternative dispute resolution proceeding in which monetary damages are sought if the "insured" is required or agrees to participate in such proceeding
- B. "Loss" means "defense costs" and the total amount of monetary damages which the "insured" becomes legally obligated to pay on account of any "claim" for a "wrongful act" with respect to which coverage hereunder applies including damages, judgments, settlements, prejudgment and postjudgment interest and punitive or exemplary damages.....
- "Loss" shall **not** include
- Taxes, criminal or civil fines or penalties imposed by law, except as noted above or
  - Any restitution, disgorgement or similar sums
- M. "Wrongful act" means any actual or alleged error misstatement misleading statement act, omission neglect or breach of duty committed attempted or allegedly committed or attempted on or after the Retroactive Date if any set forth in Declarations and prior to the end of the "policy period"

As indicated by the insuring, coverage would exist for any claims or suits that involve a conflict of interest, however, under the definition of loss the policy would not provide coverage for any payments involving criminal or civil fines and/or restitution.

**2. Are there any exclusions in the directors and officers policy that can void coverage as it pertains to conflict of interest?**

Part V, Section I of your directors and officers policy deals with the exclusions in which the insurance carrier would not be liable to pay, indemnify or defend and "claim". Upon review of these exclusions, there are two which would be of concern as it relates to conflicts of interest:

- C. *Based upon, arising out of or in consequence of or in any way involving any of the "policy insureds" or any person for whose actions the "policy insureds" are legally responsible committing any deliberately, fraudulent, dishonest, criminal or malicious act or omission or willful violation of any statute, law, rule, regulation, agreement, or judicial or regulatory order if a final judgment or final adjudication adverse to the "policy insureds" establishes a deliberately fraudulent, dishonest, criminal or malicious act or omission or willful violation of any statute law, rule, regulation, agreement or judicial or regulatory order or*
- D. *Based upon, arising out of, or in consequence of or in any way involving any of the "policy insureds" or any person for whose actions the "policy insureds" are legally responsible*
- a. *Gaining any profit or advantage to which they were not legally entitled or*

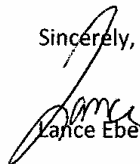
June 8, 2011  
Page 3

- b. For the return by any of the "policy insureds" of any remuneration paid to such "policy insureds" if the payment of such remuneration shall be held by the court to have been in violation of law*

In summary, the mere presence of a conflict of interest does not in of itself void coverage as stated in the coverage form. However, the directors and officers policy does limit coverage based on the definition of loss and reserves the right to void coverage based on the intent in which the conflict of interest exists.

Please let me know if you have any further questions on these matters.

Sincerely,

  
Lance Eberle, CIC, CRM, MBA

# Memo

**To:** LLCD Board  
**From:** Marty Mann, LLCD Sub-District 3 Director  
**CC:** LLCD Record Files  
**Date:** 6/7/2011  
**Re:** Review of Angela Parker's June 3rd letter

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This memorandum contains my review of our attorney's recent letter concerning the ongoing conflict of interest matter. Note that I have numbered by comments for easier reference and have provided a brief summary list of the statements at the end. None of these statements should be construed as legal opinions, since I am not an attorney.

1. Angela Parker and her law firm have provided excellent service in the past to the LLCD and has guided us through some difficult issues over the last fifteen years. With regret, I must conclude that her firm failed to protect the interests of the LLCD by not informing the board of the existence of a state law that requires, under pain of criminal prosecution, the filing of certain conflict of interest disclosure forms with the State of Indiana as well as the Circuit Court.

The existence of this law was never disclosed to us by Angela. Bob Madden discovered the law while discussing conflict of interest policies with other government bodies and then informed our attorney about the law.

Everyone makes mistakes. However I was taken aback by the lack of any sense of responsibility by her for this oversight. Her statement on page 4, paragraph 3 that, "...our firm provides advice regarding legal matters that are specifically referred to us..." fell flat with me.

She attended a board meeting earlier this year for the specific purpose of discussing this very issue and still did not inform the board of the criminal statute at that time. It is the responsibility of the attorney to know the law better than the client.

2. In paragraph 2 of page 2, Angela states that the Ind. Code 35-44-1-3 statute on conflict of interest says that a public servant commits a Class D felony if he knowingly has a pecuniary interest in a contract with a government agency and fails to file a disclosure statement. She then changes this determination in paragraph 3 of page 3 when she states that Ind. Code 35-44-1-3 statute on conflict of interest says that a public servant commits a Class D felony if he knowingly or intentionally fails to follow the law.

Based on the first statement, a reasonable person would likely conclude that the law was broken. However since John was unaware of the law, the second version of the statement would result in perhaps the opposite conclusion.

The problem is that Ind. Code 35-44-1-3 statute does not contain the words "knowingly or intentionally" fails to follow the law or anything like it. Angela seems to be confused on this matter. I could find nothing in the conflict of interest statute that lets an individual off the hook if they aren't aware of the law as suggested by our attorney in her apparent misquotation of the law.

Once again... It is the responsibility of the attorney to know the law better than the client.

3. In paragraph 4 of page 3, Angela makes the following statement. "A director's failure to abide by the conflict of interest statute should not, however, expose the board (or any board member) to criminal liability." In the same paragraph she adds this statement. "When the form is not filed, the statute contemplates action against the individual, not to the governmental entity or other board members."

This paragraph appears to conflict with itself. In the first statement, Angela concludes that none of the board members have criminal liability, but in the second statement she concludes that one of the board members, the one with the conflict, does have criminal liability. Angela, which is it?

4. Under item 1 in Angela's letter, she concludes that the board failed to enforce its conflict of interest rules by allowing John Schell to vote on his own contracts at 2009 and 2010 board meetings. She adds that, according to the meeting minutes, no one objected to his voting on these contracts.

In fact, although not included in the minutes, at least one board member, Barb Ritter, did raise objections to John's decision to participate in the discussion and vote. When John decided to vote anyway, the board, according to Angela, should have stepped in and asked him to leave the room.

As chairman at the time, I was fearful of taking this step given the fact that our legal right to enforce this rule was unclear and we had just completed a difficult lawsuit between the board and the marina for failure to pay marina fees to the LLC.

The board's reluctance to force the issue appears reasonable in light of Angela's statement in paragraph 2 on page 5 in which she states that the board, in some instances, may be depriving a board member from a potentially protected "right" to be heard if it prevents a conflicted board member to be heard on issues that affect him or her.

Wow. These apparently conflicting pieces of advice from our attorney surely places the board in a difficult position of making snap decisions on what can be discussed and what can then be voted on.

If this was difficult before, how much more difficult will it be when the person running the meeting is charged with the responsibility of determining when he should ask himself to leave the meeting.

The board will need one set of guidance for the pre-discussion of who should be in the actual discussion and then another set for the actual discussion, and then another set for the actual vote. Since Angela concludes that it would be difficult to implement rules that cover all cases, the board will need to be prepared to make legally defensible decisions at virtually every board meeting.

5. Given the risk of making further mistakes in dealing with mind-numbing complexity of this issue, I have concluded that the board must have legal counsel present at every board meeting to protect the rights and liabilities of everyone involved. This is no longer an internal board matter...outside folks are watching closely to see how this plays out.

I have been informed that at least one potential LLC vendor has already threatened legal action should the board award future conflicts to the marina while its owner is chairman of the board. I expect that, without strict rules and constant legal review, there may be a parade of lawsuits filed against the board, perhaps some by our own freeholders.

Therefore I am recommending to the board that the budget item for attorney services be increased by \$10, 000 per year to fund the presence of the LLC attorney at all board meetings. This may cover the cost of attending the meetings and annually reviewing the state conflict of interest disclosure forms, but we may need to further supplement this budget item to cover the cost of fighting lawsuits. Since this is an immediate need, we cannot afford to wait until the normal budgeting process to absorb these unexpected costs this year.

Since it is my understanding that our insurance policy will not cover any potential criminal prosecution, I further recommend that we suspend discretionary spending right now until we find out if the State intends to enforce the law and initiate criminal prosecution.

#### Summary of Statements

1. In the letter, Angela Parker accepts no responsibility for not informing the board of the state conflict of interest law because the board did not specifically ask her if there was such a law.
2. In the letter, Angela Parker misquotes the statute by adding language that does not exist in the cited law.
3. In the letter, Angela Parker states that no board members have criminal liability exposure and then reverses this statement by concluding that the board member that failed to file the state forms does have criminal liability.
4. In the letter, Angela Parker blames the board, not the conflicted board member, for allowing discussion/votes on the marina contracts but later concludes that in some cases this move may deprive the conflicted board member of his right to speak on matters that affect him.
5. As long as this conflict of interest exists, I recommend that the board have legal counsel present at every meeting and that funds be diverted from other activities to fund these costs.



Lake Lemon Conservancy District  
Conflict of Interest Policy  
Proposed Rules Promulgation

Proposed Rule 1

Purpose-Addresses existing conflicts of interest and appearances of a conflicts of interest for business agreements between an individual and the LLCD.

When an individual who has existing business dealing with LLCD is elected to the LLCD Board or is hired as a management employee the following rules are automatically applied:

- The LLCD Board shall evaluate the existing business dealing with the individual and determine if the business dealing should continue based on its value to the LLCD.
- If the LLCD Board determines that it is in the best interest of LLCD to continue the business dealing, the individual shall not participate in any discussions or votes concerning the business dealings within the context of the LLCD Board meetings, any LLCD authorized sub-committees and outside meetings with LLCD constituents or others.

Proposed Rule 2

Purpose-Prevents the occurrence of new conflicts of interest and appearances of a conflicts of interest for business agreements between an individual and the LLCD.

- LLCD Board members and management employees are disqualified from entering into any new direct or indirect business agreements or other business arrangements with the LLCD.
- The LLCD Board may only waive this rule if it determines that it is not practical to obtain the subject goods or services from other sources. In this case, the subject business dealing will be addressed by Rule 1.

Proposed Rule 3

Purpose-Addresses existing conflicts of interest and appearances of a conflicts of interest for private business activities that compete with or could be directly affected by LLCD policy.

When an individual who provides private business products or services on or around Lake Lemon that compete with or could be directly affected by LLCD policy is elected to the LLCD Board or is hired as a management employee the following rules are automatically applied:

- The individual shall not participate in any discussions or votes concerning LLCD policy on the matter within the context of the LLCD Board meetings, any LLCD authorized sub-committees and outside meetings with LLCD constituents or others.

#### Proposed Rule 4

Purpose-Addresses potential appearances of impropriety involving business dealings between an individual who serves on the LLCD Board or is an LLCD management employee and LLCD for private business dealings grandfathered under Rule 1.

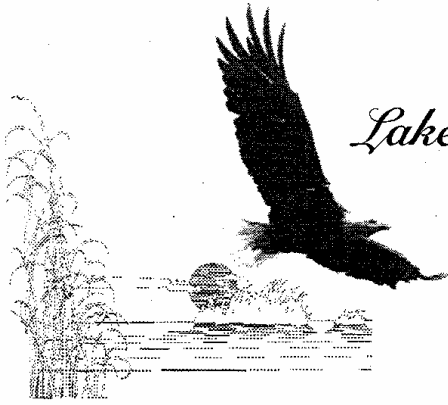
When an individual who has existing business dealings with LLCD is elected to the LLCD Board or is hired as a management employee and the business dealings are retained pursuant to Rule 1, the following additional rules are automatically applied:

- The LLCD Board shall provide direct third party oversight of all monetary contract payments or receipts between the individual and the LLCD including the quantification of products or services that generate the money exchange. The third party oversight shall be provided by the LLCD Board Treasurer or other LLCD Board designate and that individual shall be personally present during critical meetings or site inspections that serve to provide quantification of products or services that generate the money exchange.

#### Proposed Rule 5

Purpose-Prevents the occurrence of new conflicts of interest and appearances of a conflicts of interest involving business-oriented land development or land parcel sales activities within or immediately surrounding the LLCD.

- LLCD Board members and management employees shall immediately disclose to the LLCD Board any land development or land parcel sales activities in which the individual is involved with the exception of the individual's private residence.
- The LLCD Board shall develop appropriate rules of conduct for each such disclosure on a case-by-case basis such that the best interests of the LLCD are served.



## *Lake Lemon Conservancy District*

### **2011 Lake Debris Removal: Financial Update**

<b>Program</b>	Started April 18 <sup>th</sup> , 2011 Ended June 1 <sup>st</sup> , 2011
<b>2011 Budget Item for Lake Debris Removal</b>	\$3,000.00
<b>EXPENSES</b>	
<b>Staff Costs (Barge Operators)</b>	73.5 hours @ \$51.67/hour = \$3,797.75
<b>Supplies: <i>Estimated</i> (Fuel, Filters, Etc.)</b>	7 Gallons/hour @ \$3.60/gallon x 60 hours = \$1,512.00
<b>Contractual Services (Gary Barrow Excavating)</b>	\$1,500.00
<b>Grand Total</b>	<b>\$6,809.75</b>

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