

## **LARM Board of Directors Meeting Minutes**

**November 29, 2018 3:00 pm CT**

The agenda and supporting materials were emailed to the LARM Board of Directors, LARM members and LARM staff on November 23, 2018.

Board Chair Gerald Solko called the meeting of the League Association of Risk Management (LARM) Board of Directors meeting via phone conference to order at 3:01 pm November 29, 2018 and announced that LARM is subject to the Open Meetings Act and that a memo stating this was posted in the meeting room at St. Paul. Solko asked everyone to say the Pledge of Allegiance. After the pledge, the Board of Directors roll was taken.

For the roll call, the following members were present: Lane Danielzuk, Gering; David Hunter, Auburn BPW; Kimberly Neiman, Pilger; Gerald Solko, St. Paul; Shannon Stucklik, NENEDD (joining at 3:04 pm) and Andrew Ward, Valentine (joining at 3:23 pm) and Absent: Beth Bonderson, Hoskins.

Staff members present by phone were: Michael Nolan, Elizabeth Becker, Randy Peters, Dave Bos, Tracy Juranek, Fred Wiebelhaus, Paige Buffington and Diane Becker.

Guests present by phone: Kelly Brooke, Village of Benedict; ex officio Lynn Rex, League of Nebraska Municipalities (LONM); Chris Cadwell, York Risk Services Group; Mark Nestor with Independent Consulting and Risk Management Services (ICRMS); Dwight Livingston, City of North Platte; Lanette Doane, Village of Ansley; Silas Clarke, City of Hickman; Jerry Pigsley, Woods and Aitken, LLP; Stephen Bruckner, Fraser Stryker; David Domina, Domina Law; Brenda Henning, LONM ; John Zimmer, Cline Williams; Christy Abraham, LONM; Jo Leland, City of Imperial; Sandra Schendt, City of Nelson; Becky Kramer, Village of Litchfield; and others not identified.

Solko read the Nebraska Revised Statutes - § 84-1412 (2) which states, "It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings." The LARM Board will provide a public comment period of 15 minutes to discuss items on the agenda. Following public comment, the Board without further public comment will decide each of the agenda items.

Solko asked if there was anyone wanting to speak in the public comment period for non-board members.

Rex stated that she had sent out an email to members earlier in the day that she, the City of Hickman, the City of North Platte, and the Village of Ansley sought an injunction to prevent the LARM Board from implementing the voting protocol adopted at its March 14, 2018 meeting or the voting protocol on the LARM Board agenda today. Prior to a hearing in Lancaster County

Court on November 28, 2018, attorneys for LARM stated they would not oppose the injunction. At the conclusion of the hearing, the Court entered the injunction as requested.

Doane, Clark, Schendt and Kramer asked that the Board not take any action at today's meeting on extending the lease or adopting a voting protocol. Leland said she agreed with that recommendation and added not to approve hiring counsel to evaluate the reimbursement of the LARM payment of sponsorship fees to LONM.

There was nothing on the consent agenda.

Motion to approve B1- the August 21, 2018 LARM Board meeting minutes made by Stuchlik and seconded by Neiman. (Comments and requested changes offered by LONM Executive Director Lynn Rex at the October 8, 2018 LARM Board meeting will be included in the August 21, 2018 Board meeting materials.) Roll Call: Ayes: Danielzuk, Hunter, Neiman, Solko and Stuchlik. Nays: none. Absent: Bonderson and Ward. Motion carried.

Motion to approve B2 - the October 8, 2018 LARM Board meeting minutes by Danielzuk and seconded by Stuchlik. Solko said there was a misspelling of his name in the minutes that needed to be corrected. Roll Call: Ayes: Danielzuk, Hunter, Neiman, Solko, and Stuchlik. Nays: none. Absent: Bonderson and Ward. Motion carried.

C - No special presentations.

Solko asked Domina to assist him in conducting this part of the meeting.

Consideration of D1 - LARM Board approval to extend current lease with Concorde Management to a five-year term for LARM offices at 1919 South 40th Street, Suite 212.

Nolan said LARM received an offer from Concorde Management of a slight decrease of rental fees with an additional extension of the lease. An attorney with Woods and Aitken specializing in building leases – Mike Matejka - reviewed and approved the contract.

Juranek reported that by extending the lease, the cost would decrease from about \$113,000 for five years to about \$107,713.

Rex said LONM is offering to match the lease conditions terms to lease their LONM offices to LARM as it is in violation of the Interlocal Agreement not to do so. She asked if the numbers reflected taxes and utilities.

Nolan said the only difference between the current lease and the new lease was the extension and reduced price. Juranek said it did not include utilities.

Rex said she doesn't believe this is a lawful board and the board is not taking lawful action.

Motion to approve to extend current lease with Concorde Management to a five-year term for LARM offices at 1919 South 40th Street, Suite 212 by Neiman and seconded by Solko. Roll Call: Ayes: Danielzuk, Hunter, Neiman, Solko, and Stuchlik. Nays: none. Absent: Bonderson, Ward. Motion carried.

Board consideration of D2 - LARM Board authorization for LARM-designated counsel Stephen Bruckner to prepare legal evaluation of all 2% “administrative” or “sponsorship” fees the League of Nebraska Municipalities (LONM) collected from LARM between December 2013 and January 2018; to request reimbursement from LONM of these fees; and to delegate authority to the LARM Board’s Executive Committee to pursue litigation if LONM refuses to reimburse these fees.

Nolan said the rationale was outlined in a staff memo and that board members had asked for it to be on the agenda. It has been reviewed by attorneys. Process would involve investigating whether the money was lawfully provided to the LONM, and involve delegating authority to the LARM Board’s Executive Committee to pursue litigation if LONM refuses to reimburse these fees in terms of any policy statute of limitations, would inquire into statute of limitations for reimbursement of the funds and look at tax implications. Total fees that LARM has given LONM in that period was about \$650,000.

Motion to approve LARM Board authorization for LARM-designated counsel Stephen Bruckner to prepare legal evaluation of all 2% “administrative” or “sponsorship” fees the League of Nebraska Municipalities (LONM) collected from LARM between December 2013 and January 2018; to request reimbursement from LONM of these fees; and to delegate authority to the LARM Board’s Executive Committee to pursue litigation if LONM refuses to reimburse these fees by Danielzuk and seconded by Solko.

Rex stated that Nolan was Executive Director during that period.

Roll Call: Ayes: Danielzuk, Hunter, Neiman, Solko, Stuchlik. Nays: none. Absent: Bonderson and Ward. Motion carried.

Board consideration of D3 - LARM Board approval of new election procedures for Board members.

Domina stated that he represented the LARM Board members in two suits filed against them in Lancaster County District Court by Rex and three political subdivisions. On November 28, 2018 the deposition of Rex occurred concerning both suits and a hearing was held concerning the second of the two lawsuits filed. During the course of Rex’s deposition, exchanges of communication with Rex occurred in which it became possible for Domina to state that the election authority would be given to a court or Secretary of State. Inadequacies of the Interlocal Agreement required the approval of an outside authority for election of board members. Council for the plaintiffs said Rex and the political subdivisions wanted to prevent the election and not to change LARM policy. General recognition of the fact was that it was highly unlikely a valid election impervious to attack from either side could be held without a set of valid procedures approved by election authority or the court. That led to suggestion an agreement be reached and presented to the District Court. The injunction would permit the LARM Board to replace the election policy but withhold action on an election until a determination is made how the election is to occur to have an entirely elected LARM Board. Bruckner represented LARM and agreed to the injunction. Lawyers from both sides agreed to recommend to respective clients to negotiate what the election protocol would look like and the negotiations would exclude the LONM

Executive Director and the LARM Executive Director. Those negotiations would allow attorneys to present legal issues to the Board and the LARM membership if necessary to show what the policy of the election procedure would look like.

Bruckner stated that he was present at the Rex's deposition and at the court hearing and that the Domina accurately stated the November 28, 2018 occurrences. Bruckner said it was important for LARM Board members and LARM members to know that in Rex's sworn testimony, she admitted that there is no express provision in the Interlocal Agreement to allow election for LARM board members using the election process she used in the election by tele-conference she held on March 21, 2018 and on September 2018. There were no election judges, no ballot, no certification by Secretary of State or any other official, no specified location for the election, no submittal of election procedures of the March 2018 or September 2018 elections to Secretary of State or any other official for review and approval. Rex also has stated there were no financial harm to LARM by current LARM Board members.

Nolan said staff and LARM attorneys had come up with an election procedure that has more specificity and structure to maintain integrity and legitimacy of the outcome of who the board members are and resolve the representation of the issues from the plaintiff that resulted in the litigation. In Rex's March 2018 election, several people voted more than once on behalf of more than one subdivision which cannot occur. The Secretary of State approval process would be prudent. Attorneys, staff and board members had reviewed the proposed election procedure.

Ward stated he was now on the call (3:23 pm).

Domina recommended that the previous election policy approved by the Board be repealed and the proposed election policy be adopted. He anticipated that there would be great value in adopting the policy in that it would assist the attorneys in the upcoming negotiations for an appropriate election procedure to work from. It would be necessary to have an adopted policy to present to the Secretary of State or court at some point.

Rex said there is not express provision related to ballots and specified location and her position was that the LONM sponsored elections were valid. She said the Secretary of State usually does not have involvement in a pool election.

Zimmer said he didn't have a lot to add but that there was a difference of views about the Interlocal Agreement and the elections and some of the testimony might have been taken out of context.

Motion to approve revised LARM voting procedure by Solko and seconded by Stuchlik. Roll Call: Ayes: Danielzuk, Hunter, Neiman, Solko, Stuchlik and Ward. Nays: none. Absent: Bonderson. Motion carried.

Motion to repeal previous 2018 voting procedures made by Neiman and seconded by Danielzuk. Roll Call: Ayes: Danielzuk, Hunter, Neiman, Solko, Stuchlik and Ward. Nays: none. Absent: Bonderson. Motion carried.

Solko took over conducting the meeting of the Board.

Board consideration of D4 - approval of Board Chair committee appointments. Moved by Danielzuk and seconded by Ward to approve committee appointments.

Rex stated that none of the board members are following the appointment process and that Stuchlik can no longer serve on the Board and Nolan said legal counsel stated Stuchlik was a valid member.

Roll Call: Ayes: Danielzuk, Hunter, Neiman, Stuchlik, Solko, and Ward. Nays: none. Absent: Bonderson. Motion carried.

Board consideration of D5 - approval of Board Chair of Neiman and Vice Chair of Danielzuk for 2019. Moved by Ward and seconded by Hunter. Roll Call: Ayes: Danielzuk, Hunter, Neiman, Solko, Stuchlik and Ward. Nays: none. Absent: Bonderson. Motion carried.

Board acceptance of E1- Administrative Report of 2017-2018 Lean on LARM Safety Grant. Moved by Neiman and seconded by Danielzuk.

Neiman said it was a wonderful program and Solko agreed it especially helped small communities.

Roll Call: Ayes: Danielzuk, Hunter, Neiman, Solko, Stuchlik and Ward. Nays: none. Absent: Bonderson. Motion carried.

Board acceptance of E2 - Administrative Report of Actuarial Report 9-13-2018. Moved by Danielzuk and seconded by Ward to accept report. Roll Call: Ayes: Danielzuk, Hunter, Neiman, Solko, Stuchlik and Ward. Nays: none. Absent: Bonderson. Motion carried.

Board acceptance of E3 Administrative Report of Learn with LARM Risk Management seminars.

Becker said two seminars have been presented – one in Gering and one in Auburn and participants have said they appreciate the information. The next seminar is scheduled for February 14, 2019 in Norfolk.

Moved by Stuchlik and seconded by Ward to accept report. Roll Call: Ayes: Danielzuk, Hunter, Neiman, Solko, Stuchlik and Ward. Nays: none. Absent: Bonderson. Motion carried.

Board acceptance of E4 Administrative Report of the Opioid Survey Results.

Becker said she had surveyed members' EMTs for the opioid information and that it looked like there is an opioid problem in some members cities and is growing in other cities and they would approve education/help from LARM. Nolan had been at a conference where Arkansas had more prescriptions for opioids than there were citizens in the state. LARM is interested in this issue because of workers' comp issues and the future health of members' city staff.

Moved by Ward and seconded by Neiman to accept report. Roll Call: Ayes: Danielzuk, Hunter, Neiman, Solko, Stuchlik and Ward. Nays: none. Absent: Bonderson. Motion carried.

Moved to adjourn by Stuchlik, seconded by Ward. Roll Call: Ayes: Danielzuk, Hunter, Neiman, Solko, Stuchlik, and Ward. Nays: none. Absent: Bonderson. Motion carried. Meeting adjourned at 3:51 pm.

Approved on: 12/21/2018

ATTEST:

Elizabeth Becker

Secretary

FINAL