

LINCOLN BOARD OF SELECTMEN
MEETING MINUTES
AUGUST 24, 2015
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN, NH

Present: O.J. Robinson, Patricia McTeague, and Jayne Ludwig.

Staff Present: Town Manager Alfred Burbank, Fire Chief Ron Beard, and Recording Secretary Brook Rose.

Public Present: Town Attorney Peter Malia, Susan Clark, Bill Willey, Louise Willey, Stacey Conn, Donna Thompson, David Thompson, Mary Conn, David Beaudin, Jim Champagne, Tim Churchill Taylor Beaudin, Mike Leclair, Carol Riley, Edmond Gionet, Paul Beaudin, Emily Burritt, Cindy Rineer, Lutz Wallem, Stacy Conn, Denise Anguin, Frank and Velma Ghene, and Steve Noseworthy.

I. CALL TO ORDER

O.J. Robinson called the meeting to order at 5:30pm.

II. REVIEW OF MEETING MINUTES

MOTION: "To approve the minutes of the August 10, 2015 Board of Selectmen's meeting as presented."

Motion: Ludwig

Second: Robinson

Motion carries with McTeague abstaining.

III. NOISE COMPLAINT HEARING

O.J. Robinson explained that as he is a related party in this discussion he will step down from the Board at this time.

Town Attorney Malia stated he was present at the meeting to hear from any interested parties regarding the noise complaint. He stated that the Board will hear the testimony and make a decision at their next meeting on September 14th if the parties do not come to a resolution between themselves before that time. Attorney Malia explained the process of hearing the noise complaint and what the possible outcomes could be. Additionally the Board or Town Manager may choose to conduct a site visit.

Vice Chair McTeague invited David and Donna Thompson (11 Labreque St.), Denise Anguin (7 Labreque St.), and Frank and Velma Ghene (15 Labreque St.) to the table to explain their complaint. David began by stating that he does not think this structure should be there. The structure is a commercial operation in a residential zone. He explained that the abutters agreed to what was in place years ago which is the structure closer to Main Street. With the construction of the ramp structure, the business has expanded into their back yard. He added that the former owner of Alpine Adventures stated in the minutes that the ramp would not disturb the tranquility of the neighborhood. The Thompsons have written letters and called the Police Department and still nothing has been done. He added that the

minute people get on the ride they scream because it's a thrill ride. Some of the employees of the business are also the worst offenders. Donna added that the problem just seems to get worse and worse.

Denise concurred to everything the Thompson's said. Mr. Ghene stated that there is so much screaming that if a crime was committed in his back yard he wouldn't notice. Mrs. Ghene added that the employees now have a megaphone they use and they encourage the people to scream so the whole town can hear them as they go down the ramp. Employees holler to each other from the ground up. She stated that the screaming is very disruptive and that her husband has to take his hearing aids out. Patricia McTeague stated that she was under the impression that the megaphone was for safety purposes. All abutters agreed that this was not the case.

Attorney Malia stated that the former business owner came before the Planning Board for site plan review to add the ramp in December 2011. The ramp was intended for skiing, snowboarding or riding a bike down and then landing in a giant air bag. The Planning Board waived site plan review as they had seen the ramp as an addition to an adventure park and not a change of use. Thus abutters were not notified of the change and permission was granted to build the ramp and a building permit was issued. Patricia stated that in hindsight the Planning Board should likely have held a public hearing.

Town Manager Burbank stated that he has sat on the Thompson's porch twice and they do have a valid complaint. Jayne questioned whether all of this is still going on today. Donna replied that it was really bad today and the screaming is making her a nervous wreck. She added that they have had a young family move into a neighboring house and the screaming wakes up their baby.

At this time Jim Champagne (West Street) abutter to Alpine Adventures came into the meeting. He questioned whether there is a standard practice for notifying abutters of changes. He added that he received notice that Alpine Adventures was changing their sign however no one received any notice of this ramp. He stated that the Town relies on the municipal boards to ensure the integrity of the residential areas is maintained. This is why the Town has zoning in the first place to make sure there are not issues like this. Further Jim stated that he had a meeting with the Town a year ago to complain about the noise and yet is no closer to a resolution. He questioned how much longer this will go on. He stated that his neighbors have lived here for years and are now being forced to move because of this.

Attorney Malia stated that in 2009, former Alpine Adventures owner Randy Farwell got site plan and special exception approval for the adventure park. Tube usage on the ramp was not part of the approval. He added that there is no dispute that this ramp is having a serious negative effect on the neighbors' quality of life. However, the tough part is that both sides have relevant sides to the story. The Board is hoping both parties will resolve this dilemma. Velma Ghene stated that people are paying money to go through Thrillville. There is no way to quiet them down other than to take down the ramp. Mr. and Mrs. Ghene requested to be added to the abutter notification list in the future. They do not receive any notifications as they are not direct abutters to the property.

Patricia McTeague then turned the discussion over to representatives from Alpine Adventures to explain their side of the situation.

Managing Partner Jeff Woodward and O.J. Robinson represented Alpine Adventures. Jeff began by saying that it would have been great if this was done four years ago. He stated that they inherited what is there and did not build it. Further they have taken the initiative to meet with the neighbors and do understand their concerns. However, if something were to be changed down the road, there is a significant impact to their business. Jeff explained that the business has moved their offices to the site on the third floor in front of the ramp. The office has been there for 40 days and he has not seen a megaphone used once but that if there is one being used it will not be done any longer.

Before they purchased the business, due diligence was done to be sure that everything was properly permitted with the Town. A letter from the Town confirming that the ramp was permitted was even received. The business has tried to work with the neighbors and is offering to install sound board on the ramp and the installation of shrubs to cut back on the noise. The business has even looked into using the structure for another use but ran into insurance issues. Jeff added that if the Town decides to reverse their approval, it will substantially affect the business.

O.J. Robinson stated that he does agree with Jim Champagne and Donna Thompson and that it is clear that the neighbors should have been notified of the addition. However time cannot be reversed. The addition was permitted by the Planning Board. The decision was challenged a month later and the Town reaffirmed their approval of the use of the property. After that decision was reaffirmed was when the new owners decided to purchase the property. Jeff added that they have substantially improved the property. They are good business owners, good to their staff and neighbors as well as the community at large.

Attorney Malia brought the hearing to a conclusion by explaining the strengths and weaknesses of each party's argument. He added that this is a difficult decision for the Board. He strongly urged both parties to re-engage an experienced mediator.

Jim Champagne stated that he is not sure a mediator would help the situation. The neighbors and the business owners have had good discussions about the situation. There is no animosity between them but the issue really cannot be mediated as the noise cannot be reduced or eliminated unless the attraction is done away with. Patricia McTeague stated that she believes the Board should try to improve the circumstances within the confines of the permit. She added that she voted against the ramp at the Zoning Board level and now the Board of Selectmen has to deal with the situation. She also encouraged the parties to come to some resolution before the next meeting. She added that there are good people on both sides of the situation and that if ever there was a chance to resolve something with a mediator now would be the time to try.

O.J. Robinson questioned whether the Board could meet in non-public session to discuss this. Attorney Malia replied that only the legalities of the situation could be discussed in non-public. O.J. stated that obviously he would not have any part of any of the discussions and does not need to be notified of when the rest of the Board has a non-public meeting.

Paul Beaudin questioned whether when Alpine Adventures comes in for a future addition, the ramp could be reconsidered. Attorney Malia replied that it is a hypothetical situation but that it depends on what the business applied for. A sign permit would not be a reason to reevaluate the whole park.

At this time, O.J. Robinson stepped back on the Board.

IV. OLD/NEW BUSINESS

Public Petition

At this time, O.J. Robinson read what he prepared as a possible response to Mr. Gionet. Aforesaid statement has been attached to the meeting minutes.

MOTION: "To accept O.J.'s statement as the official response on behalf of the Board to Mr. Gionet's request for a response to the petition."

Motion: McTeague Second: Ludwig
Motion carries unanimously.

The Board agreed and Attorney Malia confirmed that the Town should act on the petition at the Town's Annual Meeting.

Edmond Gionet – 91A Request

At this time Edmond read the attached 91:A request.

Requests to Withdraw Signature from Petition

O.J. Robinson stated that the Board has received numerous statements from people that signed the petition to have their names removed from it. Said requests have been attached. Attorney Malia will research the legality of their requests.

Counter Petition

O.J. Robinson stated that a counter petition has been submitted to the Board. Said petition is attached. Attorney Malia stated that depending on the redaction of the signatures from the original petition, the petition must be voted on at Town Meeting. Again, Attorney Malia will research the legalities and advise the Board. Edmond Gionet stated that he believes the Board is not following the law and is interpreting it a different way. O.J. Robinson replied that the Board will follow the law as written. If this original petition moves forward, the management form of government will be voted on during the day on Town Meeting day. It will not be discussed at the evening meeting.

NHDES Letter of Deficiency

Said letter from NHDES has been attached. O.J. summarized the letter. NHDES is mandating that by October 1 the Town submit an operation and maintenance plan of the levee. By January 1, 2016 an emergency action plan must be submitted. The Town will be required to engage an engineer and research encroachments. The low level pipe must be reconstructed or removed, corrugated pipe examined, and an assessment of the U.S. geological surveys done among several other requirements. Basically, NHDES is requiring that the levee be rebuilt to 1960's standards. Additionally, the Town has to have a section of the downstream river engineered. The Town has 45 days to respond to this letter. There was an extended discussion bringing the audience up to date and answering their questions regarding the history of the levee.

Town Manager Burbank advised that he spoke with Dubois & King and they will work on the engineering to potentially prepare this project for next year. Engineer Bob Dubois made it clear that even if he was to start today, the Town would not be able to meet any of the date requirements on the NHDES Letter of Deficiency. NHDES' requirement to engineer an additional 250ft of levee is a major ordeal that will require extensive engineering. Dubois & King is preparing a report to inform the Town of how much additional money this will cost the Town

Tamra Ham questioned whether the levee will go on the ballot again. O.J. replied that it would however if it gets voted down again, NHDES can have it fixed and then take the funds directly from the Town via NHDRA. Patricia added that the Town will lose control of the project if taxpayers vote it down again. O.J. added that NHDES can continue to fine the Town \$2,000 per day per violation while they fix it.

The bottom line is that the Town will be spending more money to fix this than if it would have been done as proposed (and voted down) two years ago. The Town has now substantially increased the amount of work that has to be done as well as the amount of money being spent. Every year the Town waits, the project gets more costly,

Recording of Meetings

After a brief discussion, the Board made the following motion:

MOTION: “To record the meetings and retain the recording for a year thereafter.”

Motion: Ludwig Second: Robinson Motion carries with McTeague abstaining.

O.J. Robinson stated that he is not looking to change the way the minutes are being done. Cindy Rineer stated that meeting minutes once approved are a written legal document. You cannot use the audio recording to go back and change them after they’ve been approved. Thus the recording is useless. O.J. Robinson questioned Edmond Gionet about how long the County keeps the recordings. Mr. Gionet did not know.

MOTION: “To rescind the previous motion and to keep audio recordings of the Board meetings until the minutes have been approved.”

Motion: Robinson Second: Ludwig All in favor.

Town Manager’s Report

IT Update

Town Manager Burbank is researching the cost of live streaming the Board meetings. As far as the website, town staff will continue to update and revise it a few hours a week. As Mary Conn has pointed out, there are some mistakes on it. This took place during the conversion to the new hosting company.

Skate Park Update

Mr. Burbank informed the Board that he recently met with Dennis Ducharme. Mr. Ducharme has started the next phase of the South Mountain resort. Mr. Burbank discussed some of the Town’s parking issues with him. Mr. Ducharme has kindly offered to participate in planning for and possibly funding some additional parking for the Town as well as the Riverwalk Park and trails and possibly the skate park. Mr. Ducharme plans to attend the upcoming public hearing. All agreed this was a positive and pleasant surprise.

Emergency Services Commendation

The Board recognized the recent commendation of the police, fire, and ambulance responders involved in the recent unfortunate incident at the river. Although the accident was terrible, the emergency response team was commended for working so well together. The Board thanked them as well as the other towns that provided mutual aid.

Northern Pass Project

The Town received a letter from the Northern Pass stating that there is a new route for the project and it does not go through the Town of Lincoln. The Town will no longer be involved in this process going

forward however the Northern Pass is hosting a public meeting at Loon Mountain Resort. Details will be announced on FaceBook and the Town's website. Additionally, Butch informed the Board that the Route 3 corridor of the project will now be underground.

Rooms and Meals Tax

O.J. Robinson or Butch Burbank will represent the Town at an upcoming Senate subcommittee meeting on an initiative to redistribute the rooms and meals tax. There is an active initiative to allocate more of that tax to the larger contributing towns which would benefit Lincoln. Mr. Gionet asked that O.J. forward the meeting information to him.

Intermunicipal Agreement

The Intermunicipal Agreement has been approved by the Attorney General's office. Both municipalities now just need to sign it.

Public Participation

Edmond Gionet

Edmond Gionet questioned what the status of the declaratory judgement on Beechwood One is. O.J. replied that the Board did receive a draft version and will be reviewing it.

Paul Beaudin

Paul Beaudin questioned what the status of the sewer line project is. Town Manager Burbank replied that six companies expressed interest in the job however only one bid was received. A pre-construction meeting is scheduled for this Friday. The project is moving forward this year. O.J. explained that the project delays were due to delays from NHDOT and NHDES.

Roger Harrington

Roger Harrington questioned what the status of the Forest Ridge drainage is. Mr. Burbank replied that nothing has been done other than what was planned. Roger stated that the brook is running very muddy and slow. Butch replied that this is the first he has heard of it and that he would go look at the site tomorrow.

MS-1 Extension

MOTION: "To file an extension of the MS-1 until October 1, 2015."

Motion: Ludwig Second: McTeague All in favor.

V. NON PUBLIC SESSION Pursuant to RSA 91-A: 3II (e) Legal

MOTION: To go into Non-Public Work Session at 7:30pm.

Motion: Robinson Seconded: Ludwig Roll call vote all in favor.

MOTION: To go back into public session at 7:57pm.

Motion: Robinson Seconded: Ludwig Roll call vote all in favor.

VI. ADJOURNMENT

After reviewing the weekly accounts payables, the Board made the following motion.

MOTION: "To adjourn."

Motion: McTeague Second: Ludwig All in favor.

The meeting was adjourned at 8:00pm.

Respectfully Submitted,

Brook Rose

Approval Date 9/14/15

O.J. Robinson


Patricia McTeague


Jayne Ludwig

Below is the State statute regarding the legal procedure for voting on the termination of the Town Manager form of government in a New Hampshire town:

**TITLE III
TOWNS, CITIES, VILLAGE DISTRICTS, AND
UNINCORPORATED PLACES**

**CHAPTER 37
TOWN OR VILLAGE DISTRICT MANAGERS**

Section 37:13

37:13 Revocation. – A town that has adopted the provisions hereof may rescind such adoption by majority vote of the legal voters present and voting at a subsequent annual meeting, provided a proper article therefor is inserted in the warrant for such meeting; but no acts done or obligations incurred by the town manager prior to such rescission shall be affected thereby.

Source. 1929, 69:13. RL 55:13.

Section 37:15

37:15 Ballot Vote on Adoption and Discontinuance. – Whenever an article has been inserted in the warrant for the annual meeting of any town, village district or precinct, calling for consideration of the question of adopting the provisions of this chapter, the following question shall be submitted to the voters at such meeting: "Do you favor adoption of the town manager plan as provided in chapter 37 of the Revised Statutes Annotated?" In towns, village districts or precincts having an official ballot the clerk shall cause this question to be printed on the official ballot and the voting on this question shall be taken up at the opening of the polls and carried on simultaneously with the balloting for town officers. In towns, village districts or precincts which do not have an official ballot the clerk shall cause to be prepared in advance of such meeting a printed ballot containing the above question and in either method the question shall be followed by the words "Yes" and "No" with boxes after each, in which the voter may mark his choice. Such balloting arrangement shall be used at all meetings voting on such question pursuant to RSA 37:11 and 37:14. The polls shall remain open for at least 3 hours at any meeting balloting on such question. In voting on the question of revoking the provisions of this chapter in any town, village district or precinct pursuant to RSA 37:13, the balloting procedure prescribed by this section shall govern, except that the question appearing on the printed ballot shall be as follows: "Do you favor the continuation of the town manager plan as now in force in this town?" If a majority of the voters present and voting in a town, village district or precinct on this question signifies disapproval of this question the town manager plan will be deemed to be revoked therein provided, however, that said revocation shall not be effective until the second Tuesday of April next succeeding the annual meeting at which such action is taken.

The Town of Lincoln Board of Selectmen will proceed under this legal procedure.

August 24,2015

O.J. Robinson

Chairman Board of Selectmen

Lincoln, NH

Dear Chairman Robinson:

Re: Right-To-Know Request Relating to Petition Submitted July 27, 2015

Dear Chairman Robinson:

This is a Right-To-Know Request Pursuant to to RSA 91-A requesting all documents and communications relating to the above referenced Petition. I ask that all fees be waived when repsonding to this request .

In responding to this request, please consider the time limits mandated by the Right-to-Know law. In discussing those limits in *ATV Watch v. N. H. Dep't of Res. & Econ. Dev.*, 155 N. H. 434 (2007), the New Hampshire Supreme Court has stated that RSA 91-A:4, IV requires that a public body or agency, "within 5 business days of the request, make such records available, deny the request in writing with reasons, or to furnish written acknowledgement of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied." *Id.* at 440. That said, I will be reasonable with respect to the timing of your response.

If produced, these records must be produced irrespective of their storage format; that is, they must be produced whether they are kept in tangible (hard copy) form or in an electronically-stored format, including but not limited to e-mail communications. If any records are withheld, or any portion redacted, please specify the reasons.

Thank you for your anticipated cooperation. I look forward to hearing from you as soon as possible. Of course, if you have any questions or concerns, do not hesitate to contact me.

Very truly yours,



Edmond Gionet

NH State Representative

Grafton 5

I am hereby requesting my name be removed from a petition I signed, submitted by State Representative Edmond Gionet, seeking to revoke the Provision of RSA 37:13, asking "Do you favor the continuation of the Town Manager Plan as now in force in this town?"

Let my signature on this form serve as an official request to BE REMOVED FROM THE ORIGINAL PETITION submitted to the Town of Lincoln Board of Selectmen.

Marie C Corbail
(Signature)

MARIE C CORBEIL
(Please Print)

DATED: 8-21-15

I am hereby requesting my name be removed from a petition I signed, submitted by State Representative Edmond Gionet, seeking to revoke the Provision of RSA 37:13, asking " Do you favor the continuation of the Town Manager Plan as now in force in this town?"

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Dorothy W. Kitchell
(Signature)

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(Please Print)

DATED: 8.21-15

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(Signature)

LOUIS CORBELL
(Please Print)

DATED: 8-21-15

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Patricia J. Wishart
(Signature)

PATRICIA S. WISHART
(Please Print)

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Nancy R. McMoran
(Signature)

Joseph McMoran
(Please Print)

DATED: 8-21-15

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Laurence Gilman
(Signature)

LAURENCE GILMAN
(Please Print)

DATED:

8/21/15

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(Signature)


(Please Print)

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Deborah M. Celino
(Signature)

Deborah M. Celino
(Please Print)

DATED: 8/20/15

August 26, 2015

To the Town of Lincoln Board of Selectmen

I, Deborah M. Celino of 255 Pollard Road, Lincoln, NH hereby request my name be removed from a petition presented to me by Edmond Gionet requesting the removal of the Town Manager form of Government in Lincoln.

Deborah M. Celino

8/26/15

Deborah M. Celino

Date



Deborah M. Celino
255 Pollard Rd
Lincoln NH
03251

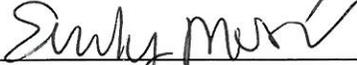
Counter-Petition to REJECT the Petition to Place an Article on the Warrant for Special Town Meeting to revoke town manager form of government

To see if the Town will reject the petition requesting relief under NH RSA 37:13 to place an article on the warrant for a Special Town Meeting to revoke town manager plan as now in force in this town.

- The following voters want to retain the Town Manager Plan form of government.
- The following voters want to REJECT the petition asking the town to vote as follows: "Do you favor the continuation of the Town Manager Plan as now in force in the Town of Lincoln?"
- Under NH RSA 35:17 the voters of Lincoln were asked "Do you favor adoption of the town manager plan as provided in chapter 37 of the Revised Statutes Annotated?" We voters said "Yes" and continue to say "Yes".

Sign: 

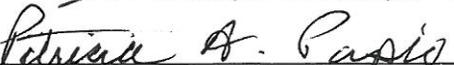
Print Name: Kevin P Riley

Sign: 

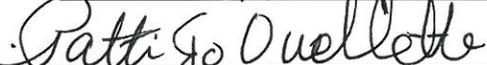
Print Name: Emily MORSE

Sign: 

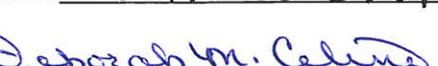
Print Name: DEVEDA COBURN

Sign: 

Print Name: Patricia A. Papio

Sign: 

Print Name: Patti Jo Ouellette

Sign: 

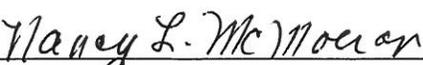
Print Name: Deborah M. Celina

Sign: 

Print Name: DAVID G. DIXON

Sign: 

Print Name: Laurence Gilman

Sign: 

Print Name: Nancy L. McMoran

Sign: 

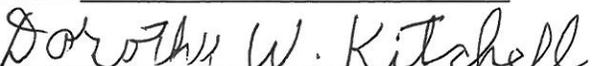
Print Name: PATRICIA S. WISHART.

Sign: 

Print Name: MARIE C CORBEIL

Sign: 

Print Name: LOUIS CORBEIL

Sign: 

Print Name: Dorothy W. Kitchell

Sign: 

Print Name: Wendy J. Tanner

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Sign: Timothy m churchill

Print Name: Timothy m churchill

Sign: John macDonale

Print Name: John macDonale

Sign: Clifton Dauphine

Print Name: CLIFTON DAUPHINE

Sign: Elizabeth Dauphine

Print Name: ELIZABETH DAUPHINE

Sign: Mat Glover

Print Name: Mat Glover

Sign: William R Walter

Print Name: WILLIAM R WALTER

Sign: William R Walter

Print Name: WILLIAM R WALTER

Sign: J. Thomas Crump

Print Name: J. THOMAS CRUMP

Sign: Patty Noël

Print Name: Patty Noël

Sign: Leon Noël

Print Name: LEON NOËL

Sign: Sloan Smith

Print Name: Sloan Smith

Sign: Betty Webster

Print Name: BETTY WEBSTER

Sign: Nan Waldo

Print Name: Nan Waldo

Sign: Cheryl Bailey

Print Name: Cheryl Bailey

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Sign: Louise M Willey

Print Name: Louise M Willey

Sign: James Welsh

Print Name: James Welsh

Sign: Kathleen A. Cook

Print Name: Kathleen A. Cook

Sign: Stacey Hurlbutt

Print Name: Stacey Hurlbutt

Sign: Kerry MacDonald

Print Name: Kerry MacDonald

Sign: Dennis Desmarais

Print Name: Dennis Desmarais

Sign: Nicole Keon

Print Name: Nicole Keon

Sign: Ron Beard

Print Name: Ron Beard

Sign: Teri Avery

Print Name: Teri Avery

Sign: Mary Donahue

Print Name: MARY DONAHUE

Sign: Richard Caston

Print Name: RICHARD CASTON

Sign: Paul Peterson

Print Name: PAUL PETERSON

Sign: Stephen Turner

Print Name: STEPHEN TURNER

Sign: Rebecca Velazquez

Print Name: Rebecca Velazquez

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Sign: Etta Martin

Sign: _____

Print Name: ETTA MARTIN

Print Name: _____

Sign: Robert Brown

Sign: _____

Print Name: ROBERT BROWN

Print Name: _____

Sign: _____

Sign: _____

Print Name: _____

Print Name: _____

Sign: _____

Sign: _____

Print Name: _____

Print Name: _____

Sign: _____

Sign: _____

Print Name: _____

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Print Name: _____

Print Name: _____

Sign: _____

Sign: _____

Print Name: _____

Print Name: _____

Counter-Petition to REJECT the Petition to Place an Article on the Warrant for Special Town Meeting to revoke town manager form of government

To see if the Town will reject the petition requesting relief under NH RSA 37:13 to place an article on the warrant for a Special Town Meeting to revoke town manager plan as now in force in this town.

- The following voters want to retain the Town Manager Plan form of government.
- The following voters want to REJECT the petition asking the town to vote as follows: "Do you favor the continuation of the Town Manager Plan as now in force in the Town of Lincoln?"
- Under NH RSA 35:17 the voters of Lincoln were asked "Do you favor adoption of the town manager plan as provided in chapter 37 of the Revised Statutes Annotated?" We voters said "Yes" and continue to say "Yes".

Sign: Tamra A. Ham

Print Name: Tamra A. Ham

Sign: [Signature]

Print Name: Arnold Ham

Sign: _____

Print Name: Florence C Bartlett

Sign: [Signature]

Print Name: _____

Sign: [Signature]

Print Name: Jonathan Ham

Sign: [Signature]

Print Name: Kristene Klepser

Sign: [Signature]

Print Name: IVAN STRICKON

Sign: Paula M. Strickon

Print Name: PAULA M. STRICKON

Sign: _____

Print Name: _____

Counter-Petition to REJECT the Petition to Place an Article on the Warrant for Special Town Meeting to revoke town manager form of government

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Sign: Thom J. Doan

Sign: _____

Print Name: TOM DOAN

Print Name: _____

Sign: Susan Wajson

Sign: _____

Print Name: SUSAN WAJSON

Print Name: _____

Sign: Graham Wright

Sign: _____

Print Name: Graham Wright

Print Name: _____

Sign: _____

Sign: _____

Print Name: _____

Print Name: _____

Sign: _____

Sign: _____

Print Name: _____

Print Name: _____

Sign: _____

Sign: _____

Print Name: _____

Print Name: _____

Sign: _____

Sign: _____

Print Name: _____

Print Name: _____



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

Mr. Alfred Burbank, Town Manager
Town of Lincoln
P.O. Box 25
148 Main Street
Lincoln, NH 03251

August 17, 2015
Letter of Deficiency
DSP#15-020

RE: Pemigewasset River Dike (Levee) D137024, Lincoln

Dear Mr. Burbank:

The Department of Environmental Services, Dam Bureau (DES) is responsible for ensuring the safety of dams in New Hampshire through its dam safety program. In accordance with RSA 482:12 and Env-Wr 302.02, inspections of the subject dam were conducted on July 29, 2014 and July 23, 2015. Based upon the results of these inspections, as well as upon additional investigation or analysis that may have been conducted, DES is issuing this Letter of Deficiency (LOD) to advise you that it believes the following deficiencies should be remedied in accordance with the deadlines indicated:

By October 1, 2015:

1. Submit an Operation, Maintenance and Response (OMR) form in accordance with Env-Wr 303.05 of DES's Code of Administrative Rules. A link to the blank two-page form may be found on the following web page: <http://des.nh.gov/organization/divisions/water/dam/index.htm>. The Operation and Maintenance Manual generated in 1961 by the United States Army Corps of Engineers (USACE), and subsequent versions of this document cannot be used as a substitute for the OMR form.

By January 1, 2016:

2. Submit an Emergency Action Plan (EAP) in accordance with the requirements of Chapter Env-Wr 500 of DES's Code of Administrative Rules. Additional guidance and information may be found on the following web page: <http://des.nh.gov/organization/divisions/water/dam/eap/index.htm>. DES has copies of the existing Emergency Level 1 through 3 flow charts in its files, and though portions of these may be used when completing the EAP, the notification flowchart template found at the above-referenced link should be used.
3. Engage the services of a qualified engineering consultant to investigate and evaluate the following items and to submit a report summarizing findings and recommendations:
 - a. All aspects of encroachment that has occurred due to the construction of the condominium units (concrete foundations, patios/decks, buried utilities, stone landscaping, ornamental plantings, etc.) along the right bank of the river. Provide recommendations for retaining, removing or modifying any that degrade the function, operational safety or future maintenance of the levee;
 - b. The abandoned headworks and low level pipes located at the intersection of the flank dike and main levee. These structures should be reconstructed or removed, or provisions should be made to abandon some or all of the current works in place. This work should also include an assessment of the United States Geological Survey's stream gage (building and utilities) and how its components will be incorporated into the rehabilitation of the levee's crest and upstream slope; and

DES Web site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-6120 • TDD Access: Relay NH 1-800-735-2964

- c. The condition of the 24" diameter corrugated metal pipe that extends through the levee near its downstream end. Consideration should be given to installing a device to prevent river flows from backing up onto adjacent properties.

By December 1, 2016:

4. Remove all trees, brush or other undesirable vegetation from all portions of the levee structure and from within 15 feet of all fill material. The limits of such clearing extends from the so-called "flank dike" located at the upstream end of the levee to the point where the levee fill blends into the right bank of the Pemigewasset River some 1,700 feet downstream. For reference, see Dubois & King's October 2013 plans from station 0+00 to station 17+00+/-.
5. Regrade the levee crest and downstream slopes to return these areas to a smooth, level and consistent shape and profile. This work should include:
 - a. Provisions for a crest (top) width of no less than 6 feet; and
 - b. Establishing erosion protection on all disturbed areas.
6. Repair the extensive erosion and sloughing along the entire upstream slope of the project (flank dike and levee). Past high flow events have caused significant sloughing, settlement and, in many locations, complete loss of the large granite blocks meant to protect the levee embankment. This work should include:
 - a. Regrading sections that cannot be simply chinked or filled with new stone;
 - b. Assessing the interface between the toe of the slope and the river channel and implementing a repair that minimizes or prevents future settlement or erosion;
 - c. Consideration for removing the remnants of the timber crib spillway that abuts the levee at its upstream end. This area is founded on ledge and may require special treatment to stabilize the toe of the levee slope; and
 - d. Providing a slope protection that will withstand those forces (stage and velocity) encountered for river flows consistent with the top of the levee.

Completion of much of the work required to correct the identified deficiencies will require the submittal of the standard dam reconstruction application, accompanied by the fee consistent with a high hazard dam. Please note that since the proposal for rehabilitating the structure is meant to restore it to its 1960 as-built configuration (USACE directive), DES's design requirements associated with hydrological and hydraulic analyses have been waived as part of this permitting exercise. That is, there is no requirement to reconfigure (raise or extend) the levee to pass the storm flow equivalent to 2.5 times the 100-year runoff, but rather any rehabilitation proposal will be evaluated on its ability to ensure that the levee remains stable with water levels to its reconstructed crest elevation.

In addition, DES also recommends that you review existing and/or establish adequate rights, easements and access to allow for future maintenance, repair or reconstruction of the levee system. These rights should allow for a reasonable buffer around all abutments, fill slopes or other components to allow for these types of activities. Consideration should be given to establishing a detailed property plan with reproducible bounds so as to minimize the potential for future encroachment that might interfere with the needs of the levee. The levee system includes the flank dike at the upstream end of the levee, the main portion of the levee and the corrugate metal pipe located through the levee near its downstream end. Refer to item #3, above, for the approximate bounds of the levee system.

Pemigewasset River Dike (Levee)
Dam #D137024/DSP#15-020
August 17, 2015
pg. 3

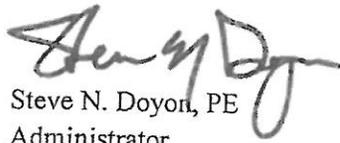
Please note that under New Hampshire's state statute RSA 482:89, DES may commence proceedings to levy fines of up to \$2,000 per violation per day against a dam owner who does not respond within 45 days of receipt of a written order, directive, or any notice of needed maintenance, repair, or reconstruction issued by DES. To avoid proceedings under this provision, you **must respond** to this LOD. If you fail to return this form within 45 days or fail to otherwise respond in writing within 45 days indicating your intent to remedy the identified deficiencies, you will not have the benefit of the compliance deadlines indicated on the form and DES will commence a proceeding under RSA 482:89 to seek administrative fines for the identified deficiencies. Please note that responding as required does not preclude DES from pursuing other appropriate action for the identified deficiencies, in accordance with the DES Compliance Assurance Response Policy, available on-line at <http://des.nh.gov/organization/commissioner/legal/carp/index.htm>.

We believe the easiest way to respond is to sign and return the attached "Intent to Complete Repairs" form, either agreeing to correct the identified deficiencies by the dates indicated OR by proposing amendments to the listed work items or dates, which you may do by writing directly on the form. DES will evaluate and respond to any reasonable requests for proposed amendments in a timely manner. We have enclosed a self-addressed stamped envelope for you to return this form. You may also scan and e-mail the completed form to damsafety@des.nh.gov or fax it to (603) 271-6120.

Our intent in issuing this LOD is to make you aware of items that require your attention to ensure the continued safe operation of your dam. It is our hope that, through the return of the attached form and correction of the identified deficiencies, you will develop and maintain a commitment to keeping a safe and well-maintained dam.

If you have any questions or comments regarding this LOD or would like to be present at future inspections, please contact Corey Clark, P.E. at 271-7507 or me at 271-3406 or write to the address for the Water Division listed on the bottom of the cover page.

Sincerely,



Steve N. Doyon, PE
Administrator
Dam Safety & Inspection Section

Attachments: Photos, Blank OMR form, DB8, DB13

cc: DES Legal Unit

Certified #7011 1570 0003 6776 6058

SND/CJC/was/s:/WD-Dam/damfiles/D137024/LOD/20150817 D137024 LOD.docx

Dam #D137024 Lincoln Levee Lincoln, NH Inspection Photos



Corrugated pipe near downstream end of levee

Dam #D137024 Lincoln Levee

Lincoln, NH Inspection Photos



Abandoned headworks gates



Eroded crest - typical



Eroded crest - severe



Encroachment - typical

Dam #D137024 Lincoln Levee

Lincoln, NH

Inspection Photos



Abandoned pipes through flank dike



Displaced armor blocks



Displaced armor blocks (2)



Displaced armor blocks (3)



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

Department of Environmental Services
State Dam Safety Program
Water Division, Dam Bureau
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

Intent to Complete Repairs
DAM #D137024/DSP #15-020
DAM Pemigewasset River Dike (Levee)

RE: Letter of Deficiency: Issued on August 17, 2015

Dear Dam Safety Program:

In response to the above referenced Letter of Deficiency (LOD), I concur with the Department of Environmental Service's recommendations, and specifically agree to complete the following items by the indicated schedule.

DATE: October 1, 2015

1. Submit an OMR form in accordance with Env-Wr 303.05 of DES's Code of Administrative Rules. A link to the blank two-page form may be found on the following web page: <http://des.nh.gov/organization/divisions/water/dam/index.htm>. The Operation and Maintenance Manual generated in 1961 by the United State Army Corps of Engineers (USACE), and subsequent versions of this document cannot be used as a substitute for the OMR form.

DATE: January 1, 2016

2. Submit an EAP in accordance with the requirements of Chapter Env-Wr 500 of DES's Code of Administrative Rules. Additional guidance and information may be found on the following web page: <http://des.nh.gov/organization/divisions/water/dam/eap/index.htm>. DES has copies of the existing Emergency Level 1 through 3 flow charts in its files, and though portions of these may be used when completing the EAP, the notification flowchart template found at the above-referenced link should be used.
3. Engage the services of a qualified engineering consultant to investigate and evaluate the following items and to submit a report summarizing findings and recommendations:
 - a. All aspects of encroachment that has occurred due to the construction of the condominium units (concrete foundations, patios/decks, buried utilities, stone landscaping, ornamental plantings, etc.) along the right bank of the river. Provide recommendations for retaining, removing or modifying any that degrade the function, operational safety or future maintenance of the levee;
 - b. The abandoned headworks and low level pipes located at the intersection of the flank dike and main levee. These structures should be reconstructed or removed, or provisions should be made to abandon some or all of the current works in place. This work should also include an assessment of the United States Geological Survey's stream gage (building and utilities) and how its components will be incorporated into the rehabilitation of the levee's crest and upstream slope; and

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- c. The condition of the 24" diameter corrugated metal pipe that extends through the levee near its downstream end. Consideration should be given to installing a device to prevent river flows from backing up onto adjacent properties.

DATE: December 1, 2016

4. Remove all trees, brush or other undesirable vegetation from all portions of the levee structure and from within 15 feet of all fill material. The limits of such clearing extends from the so-called "flank dike" located at the upstream end of the levee to the point where the levee fill blends into the right bank of the Pemigewasset River some 1,700 feet downstream. For reference, see Dubois & King's October 2013 plans from station 0+00 to station 17+00+/-.
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 - c. Consideration for removing the remnants of the timber crib spillway that abuts the levee at its upstream end. This area is founded on ledge and may require special treatment to stabilize the toe of the levee slope; and
 - d. Providing a slope protection that will withstand those forces (stage and velocity) encountered for river flows consistent with the top of the levee.

You must sign and return this Intent form either agreeing to comply with the listed items by the dates indicated OR proposing amendments to either the listed work items or compliance dates (please state reasons for proposal and use reverse side if more space is needed). DES will evaluate and respond to any reasonable requests for amending the scope of the work items or compliance dates in a timely manner. We have enclosed a self-addressed stamped envelope for you to return this form. You may also scan and e-mail the completed form to damsafety@des.nh.gov or fax it to (603) 271-6120.

Please note that meeting the statutory 45-day response deadline is necessary even if the first compliance deadline on the LOD is beyond that date. Failure to return the form or otherwise respond will result in DES initiating a proceeding to seek an administrative fine against you.

Signature of Owner: _____

_____ (print name) Date: _____

ENG-: CJC

Operation, Maintenance and Response Information

Completed on: _____

For information or questions, please contact the dam owner using the information below or the NH Dept. of Environmental Services at (603) 271-3406.

1. Dam and Owner/Operator Information

Dam Name PEMI RIVER LEVEE NH Dam Inventory # & Hazard Classification D137024
City/Town LINCOLN Downstream Watercourse _____

Dam Owner

Name _____
Address _____

City/Town/Zip _____
Telephone _____ Cell _____
E-mail _____

Emergency Contact (Dam incidents or flooding)

Name _____
Address _____

City/Town/Zip _____
Telephone _____ Cell _____
E-mail _____

2. Dam Information

Height(ft) 15 Length(ft) 1882 Pond Size(ac) N/A
Normal Storage Capacity(ac-ft) N/A Drainage Area(sq mi) 115

Outlet Works – Describe the dam’s discharge features, and then include specific information on each below (sizes, dimensions, inverts, etc...).

Spillway(s) _____ Other _____
Gate(s) _____ Other _____
Stoplog Bay(s) _____ Other _____

Description of the Area Downstream of the Dam (Include information on such things as roadways, dams, bridges or property that may be in danger of flooding due to high water events, dam failure or dam operations and, if known, the flow rates at which areas begin to be impacted. Also include information on any minimum flow needs downstream.)

3. Operations and Maintenance Information

Normal Reservoir Management Procedures (How is the impoundment level managed throughout the course of a calendar year? How do you achieve this?)

Summer _____
Fall _____
Winter _____
Spring _____

Normal Maintenance and Monitoring Procedures (What types of and at what frequency is routine maintenance and monitoring performed at the dam?) _____

4. Incident Management and Response Information

Flood or Dam Incident Response Procedures (Describe the procedures employed to manage the dam in times of stress. Monitoring frequencies, operational protocols, and notification of local emergency response officials and affected downstream parties should be explained. Include the names and contact information of key parties and officials, including the local emergency management director, fire/police departments and downstream parties who might be impacted by the flood or dam incident. A cohesive communications plan is important and should result in a product that allows the timely exchange of accurate information.) _____

Contact:
Name _____
Address _____

City/Town/Zip _____
Telephone _____ Cell _____
E-mail _____

Contact:
Name _____
Address _____

City/Town/Zip _____
Telephone _____ Cell _____
E-mail _____

Contact:
Name _____
Address _____

City/Town/Zip _____
Telephone _____ Cell _____
E-mail _____

Contact:
Name _____
Address _____

City/Town/Zip _____
Telephone _____ Cell _____
E-mail _____

Please correct any of the information in **BOLD** text in sections 1 and 2 on page 1.

Please use the reverse side of this sheet to include additional contacts or information that relates to the operation, maintenance or emergency response for this dam that you believe is important for response officials or abutters to know. (DES 01/25/2007)

Nonpublic Session Minutes
TOWN OF LINCOLN
BOARD OF SELECTMEN

Date: August 24, 2015

Members Present: O.J. Robinson
Jayne Ludwig
Patricia McTeague

Motion to enter Nonpublic Session made by Robinson seconded by Ludwig.

Specific Statutory Reason cited as foundation for the nonpublic session:

RSA 91-A:3, II (a) *The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, unless the employee affected (1) has a right to a public meeting, and (2) requests that the meeting be open, in which case the request shall be granted.*

RSA 91-A:3, II(b) *The hiring of any person as a public employee.*

RSA 91-A:3, II(c) *Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of this board, unless such person requests an open meeting. This exemption shall extend to include any application for assistance or tax abatement or waiver of a fee, fine or other levy, if based on inability to pay or poverty of the applicant.*

RSA 91-A:3, II(d) *Consideration of the acquisition, sale or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.*

RSA 91-A:3, II(e) *Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against this board or any subdivision thereof, or against any member thereof because of his or her membership therein, until the claim or litigation has been fully adjudicated or otherwise settled*

RSA 91-A:3, II(i) *Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.*

Roll Call vote to enter nonpublic session: O.J. Robinson Y
Jayne Ludwig Y
Patricia McTeague Y

Remove public meeting tape (if applicable).

Entered nonpublic session at 7:30 p.m.