

LINCOLN BOARD OF SELECTMEN'S

MEETING MINUTES

AUGUST 3, 2020 – 5:00PM

LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN, NH

APPROVED

Board of Selectmen Present: Chairman OJ Robinson, Vice Chair, Tamra Ham, and Selectman Jayne Ludwig

Staff Present: Town Manager, Butch Burbank, Fire Chief Ron Beard, Police Chief Chad Morris, and Administrative Assistant Jane Leslie

Public Present: Roger Harrington, Dave Beaudin, Richard Sakakeeny (Bunker Lane resident), Paul Beaudin, Peter Marlow and Renee Darling (d/b/a Degmar Development Corp.).

Public Present via Zoom Video Conferencing: Carol Riley.

I. CALL TO ORDER

Chairman Robinson called the meeting to order at 5:03 pm.

II. APPROVAL OF MEETING MINUTES FROM PREVIOUS MEETING

The approval of the meeting minutes from July 22nd and July 27th was postponed until next week.

III. LEVEE DISCUSSION WITH MR. RICHARD SAKAKEENY

Chairman Robinson explained the Mr. Sakakeeny (Bunker Lane resident) requested a meeting with the Board of Selectmen to present his thoughts on getting the 250' portion of the Levee Embankment that is *not* covered by the US Army Corp. of Engineers (USACE) PL84-99 Rehabilitation Program to be covered by the Maintenance Agreement and to have the Town sponsor this section to be included in the PL94-99 (the USACE is *not* authorized to repair this portion of the levee embankment in the event it was damaged during a flood event).

Mr. Richard Sakakeeny addressed the Board of Selectmen concerning his desire for the town to work with him to get the USACE to accept and include the "levee extension" as part of their reactivation of the main portion of the levee, and therefore assume responsibility for any required future repairs to this 250' section of levee (Maintenance Agreement). Mr. Sakakeeny added that he is willing to enter into an agreement with the Town to share in the maintenance responsibility. Sakakeeny referenced a letter that he received from Town Manager Burbank dated January 28, 2020 which had a sub-paragraph that detailed a path forward for the Town (Sponsor) to apply for the non-federal portion of the levee (250') to be included in the Assurance Agreement (*see attached*).

Chairman Robinson explained that at the present time, the USACE will step-in if there is a larger failure or damage to the levee, however, the town is responsible for expenses related to the annual maintenance and upkeep of the levee. Sakakeeny explained that he has expressed his interest in working together with the town on several occasions, and feels that he performs his share of maintenance on his section of the levee embankment that is not part of the federally-constructed levee (mowing lawn, checks stones for growth along the river) and he feels that this is a great opportunity that would be mutually beneficial to both the town and the Bunker Lane residents if they could come up with a joint maintenance agreement.

Chairman Robinson explained that the Town of Lincoln had participated in an extensive court battle to prove that the Town did *not* own the levee (including the additional 250'), and Robinson expressed his concern over what this may "indicate" if the Town should take on responsibility for this additional section of levee embankment that the Town does *not* own. Robinson went on to further explain that the Town's

legal argument and court case was primarily based on the *1960 Army Corp. of Engineers Assurance Agreement*, and questioned how this would look or appear, if the Town took on the responsibility of an additional 250' of levee embankment that the Town does *not* own.

Mr. Sakakeeny feels that there could be some resolution that is both ethical and moral, and beneficial to all. Sakakeeny reminded the Board that he has paid thousands of dollars in taxes over the years to the Town of Lincoln, and he and his family love living in town and believe that there should be some moral obligation on the town's behalf to all of its taxpayers. Mr. Sakakeeny asked the Selectmen (as Sponsors of the levee) to at least consider exploring his request to see if there is any way or opportunity to make this happen.

Selectman Ham was concerned with how making this potential agreement to take on the additional 250' of levee embankment may impact future generations of Lincoln residents and taxpayers, and she was simply not prepared to take on this responsibility at this time, particularly in light of the thousands of taxpayer dollars that have already been expended to repair the levee. Selectman Ludwig agreed and reminded everyone that it took several years to get the taxpayers to agree to fund the repairs that were required to get the levee back into compliance with the USACE 1960 Standards.

Chairman Robinson acknowledged that the Town is currently trying to get the levee project completed, and is in the process of tying up several loose ends (O&M Manual), as well as awaiting the USACE to sign-off on the levee and reactivate it. Robinson does not want to begin exploring *anything* until such time that this has been completed, and the Army Corp has signed off on the levee. Town Manager Burbank added that he spoke with the Dubois and King Engineer today, and most of the final adjustments/comments have been completed and they are preparing to send the manual to USACE, DES, and the Town for final review/comments. Burbank added that he briefly inquired about making amendments to the 1960 Agreement, and was told that any modifications to the 1960 Agreement would have to go before the U.S. Congress and/or a congressional committee. Robinson reiterated that any proposed changes to the agreement will not be considered until the Town concludes its business with the USACE.

Mr. Sakakeeny departed the meeting at this time.

IV. OLD/NEW BUSINESS

OLD BUSINESS:

Email received from Paul Beaudin Re: Peter Marlow, d/b/a Degmar Development Corp.

Chairman Robinson read an email received from Paul Beaudin as follows: *Good Evening: It has been brought to my attention that the owner of the property on Labrecque Street was advised by the Fire Chief that the Cease and Desist was instigated by a complaint from Paul Beaudin. I was one of many who was concerned about the construction on this property, and it was highly inappropriate for your staff to have specifically called me out as the reason why this Cease and Desist was being given. I am requesting to meet with the Selectmen at the next Selectmen's meeting to discuss in public the actions taken by Lincoln staff to name me as the cause for this action. -Paul Beaudin II*

Chairman Robinson read an email response from Fire Chief Ron Beard as follows: *"Good Morning, I have reviewed the email from Paul Beaudin in regards to the Peter Marlow project. When I spoke with Peter on several occasions, he asked me who is complaining about him and I told him that we have received some complaints from his neighbors, and it has been discussed at board meetings. I also advised him to watch the meetings that are uploaded to YouTube so he will know what is being said about the project so he can be prepared to address those concerns properly to the appropriate board. Paul has been outspoken*

about this project on several occasions specifically at these meetings and to save time, I have them listed: Planning Board meeting on 7/8/2020 at 2hrs 9min; Planning Board meeting on 7/15/2020 at 2hrs 41min, BOS meeting on 7/20/2020 at 1hr 43min, and last night's BOS meeting. With Paul being outspoken so many times, I would not be surprised that Peter would assume the Cease and Desist was because of his complaining. Have a great day. -Ron Beard"

Chairman Robinson responded that any discussion concerning Town Employees will *not* be held in a public forum, but rather discussed in a non-public session. Paul Beaudin responded that he was concerned that his name was being used as a "reason" for the *Cease and Desist* order being issued, which is not right, and an order such as this should be able to stand on its own merits. Robinson responded that Mr. Marlow's project was discussed in-depth during last week's meeting, and unless Paul had something new to add to the discussion, there was nothing else to deliberate. Beaudin explained to the Board that he had new information relative to the *Cease and Desist* order, and asked that he be allowed to share and discuss his concerns. Beaudin explained that it is his opinion that there has been an abundance of misrepresentations by Mr. Marlow, and he proceeded to detail some of his findings. Beaudin explained to the Board that the *Cease and Desist* order should be reinstated, and he is currently preparing a letter for the Planning Board to ask them to review this case. Beaudin explained that he was appealing to the Selectmen to make sure that everything presented by Mr. Marlow is in fact being done correct.

Chairman Robinson clarified that the building plans did not come before the Planning Board, only the sub-division of the land did. The application for the land use plan was brought to Town Planner, Carole Bont to review. Robinson noted that if the building disturbs more than 50% of the land, this will trigger a Storm Water Management Plan, and the Board *is* willing to look into this. Mr. Marlow was given a permit to build three (3) single-family homes and sheds on each of the lots, which is what Mr. Marlow stated he was doing during last week's Board meeting. Town Manager Burbank added that Mr. Marlow was told that he was entitled to a house and a shed on each lot (which is what he is permitted for), and anything more than that would require him to come back before either the Planning Board or ZBA. At the present time, Burbank explained that Mr. Marlow is in full compliance and the *Cease and Desist* has been lifted.

Chairman Robinson explained that the only criteria he sees that could trigger an actionable item by the Board would be if Mr. Marlow is disturbing more than 50% of his land (the Town will look into this). Beaudin is suggesting that someone should be brought in to look into how much ground has been disturbed (more/less than 50%).

Mr. Marlow addressed the Board and emphatically stated that there is absolutely no electrical anywhere near any of the buildings on the lots and it is still in the street, and he has not disturbed anywhere near 50% of the land. Marlow further explained that with the town's permission, he cut the smaller seedlings and kept the bigger trees, and the wood is piled on the land as well as the rocky fill that was dug up which may give the appearance that more than 50% was disturbed, but it was not. Marlow reviewed his plans again for his property, and stated that he felt the need to defend himself against the allegations discussed this evening.

Closed Captioning for Board Meetings

Chairman Robinson read the following email received from a town resident as follows: *"Hello All, so glad to read in the minutes that Town meetings are available on You-Tube with closed captioning. Please thank Ron for his persistence with this important matter for all residents! Thank you, -Lisa Philbrick"*

Robinson explained that the Board had been reviewing various closed-captioning options available, and they were all very expensive options, however, Kelsee Beaudin had recommended using the YouTube

streaming platform which is what the town is currently utilizing, and Chief Beard put this plan into action. Robinson gave kudos to both Kelsee Beaudin and Chief Beard.

NEW BUSINESS

Lot-line Adjustment (Mike & Marian Marcoccio – 45 Beechnut Drive)

Town Manager Burbank explained that he has received a letter from Ray D'Amante (*see attached*) who is representing Mike & Marian Marcoccio of 45 Beechnut Drive, Map 131, Lot 013 who are seeking to obtain a lot-line adjustment along Beechnut Drive in front of their home. Burbank noted that historically, when Beechnut Drive was originally constructed, it ended in front of the Marcoccio home with a traffic circle. When the road was extended, the southerly portion of the circle in front of the Marcoccio home was abandoned. The Marcoccio's recently became aware that the circle in front of their property is still shown on the plans as "Town Property," although the area is in the landscaped portion of their front yard.

Burbank explained that he and DPW Director Hadaway went to visit the property and agree that the area is nominal and of no value to the Town, and a portion of the drainage along the south side of Beechnut Drive for the road and the Marcoccio lot continues to drain into the swale, and the Marcoccio's are willing to continue the drainage right to the Town (Maintenance Easement). Mr. D'Amante is asking the Board of Selectmen to approve the lot-line adjustment at no cost to the Marcoccios (or the Town).

Selectman Ham commented that the piece of land is .09 acres which is not a tiny piece of land, and although she is not opposed to it and would like to see it back on the tax role, she does not feel that the Town should give it away. Ham noted that a few years ago the Town had the same situation with a strip of land on East Spur Road, and it was "sold" to the interested parties.

Chairman Robinson asked the Board if they wanted to hold a public hearing to discuss this matter further and give the abutters and the public an opportunity to weigh in on this matter. The following motion was made:

MOTION: "To bring this matter before a public hearing to be discussed further."

Motion: OJ Robinson

Second: Tamra Ham

Motion carries.

Nay: Jayne Ludwig

Solid Waste Facility Scale Revenues

Chairman Robinson received an email from Finance Director Johnna Hart detailing Solid Waste Revenues (the scale was implemented on December 9th, 2019). The Solid Waste Revenue for 2019, year-to-date was \$30,303.50, and, the Solid Waste Revenue for 2020, year-to-date is \$40,388.25.

Chenard Court Case

Chairman Robinson explained that the Town recently received an appeal request filed by Joe Chenard on the court case that the Town had won against Mr. Chenard's property. Both attorneys involved in this case have informed the Town that a mediation process is available to both parties prior to moving forward with the appeal hearing. Robinson explained that the Selectmen will be discussing how they would like to proceed in this matter in a non-public session this evening.

Email from Town Engineer Ray Korber - Riverfront Park Project

Selectman Ham read the following email: "*We received additional base survey data from Horizons last week and incorporated the data into our design plans. The additional data was required to develop the concept for a parking lot on the Burndy site (note that there should be no charge from Horizons for this work). We expect to have a parking lot concept developed by the end of the week. Once a concept is*

developed, we will consult with DES on the feasibility of placing a lot on top of the Burndy site. Nobis and Calex have been retained to assist on the geotechnical and environmental assessments respectively. -Ray Korber

Land Use Planning Applications

Selectman Ludwig asked if there is an allowance on the time-frame for approving Land Use Permits due to the current COVID crisis, which has slowed the turnaround time on applications substantially. Burbank responded that the applicants should be submitting their applications only when they are complete. The submission of incomplete applications can slow the process down considerably.

Town Manager's Report

September 12th postponed Fireworks Event

Selectman Ham and Woodstock Selectman Charyl Reardon met with Jay Scambio (Loon Mt.) via Zoom and discussed the upcoming Fireworks Event (September 12th). Ham explained that an inspector from Northstar Fireworks (Display Company) will be reaching out to Jay Scambio to discuss the feasibility of lighting fireworks off up at Loon Mountain. If all goes well, the next step will be a Zoom meeting with Loon Mountain and both Lincoln and Woodstock Chiefs, Selectmen Ham and Reardon, and the Fireworks Company. Ham noted that Jay Scambio suggested it may be better for Loon Mountain if they considered holding the event on either Friday, September 11th or Sunday, September 13th.

Levee Update

Burbank updated the Board on the FEMA review of the levee, and Dubois & King Engineer, Bob Durfee informed Burbank that the final plans are going to be submitted to FEMA this week (flood plain).

Raftelis Water Rate Study – Ad Hoc Water Committee

The Board discussed an email received from Town Engineer Ray Korber concerning a Q&A document submitted to Raftelis (Dave Fox) and their response. The Board agreed to put this on next week's meeting agenda (August 10th) to discuss the water report and Q&A further. The Board also scheduled an Ad Hoc Water Committee meeting scheduled for Thursday, August 13th at 3:00 pm.

State Highway Block Grant

Chairman Robinson read a letter received from the State of NH DOT (*see attached*). The State Highway Block Grant Aid anticipated to be available to the Town of Lincoln during Fiscal Year 2021 (July 1, 2020 to June 30, 2021) is as follows: July 2020 Actual Payment \$10,699.69, October 2020 Actual Payment \$10,699.69, January 2021 Actual Payment \$7,133.13, and, April 2021 Estimated Payment \$7,133.12. Total for FY 2021: \$35,665.63.

"No Parking" sign for Coolidge Street

Selectman Ham read the following text message received from Coolidge Street resident, Laurel Kuplin: *"Good morning, would it be possible to get a no parking sign in the street that is more visible instead of just on the far ends? To be fair, where the signs are located makes it difficult to see for people going to church and when they park on both sides of my driveway I sometimes can't pull out (or in). Sorry to bother you- I really do appreciate all you work -Lauren Kuplin"*

Town Manager Burbank asked Chief Morris to go over to Coolidge Street to take a look at this concern and to follow-up with his assessment.

Sidewalk issue on Pollard Road and School Street

Selectman Ludwig asked Town Manager Burbank if anyone has looked into the sidewalk on Pollard

Road/School Street that appears to slope downhill and not be ADA accessible. Burbank was not aware of this and responded that he would check into this with DPW Director Hadaway.

Public Participation

Roger Harrington asked if there was any news on The Pines, and if they got their SWIPP for the Forest Gardens. Chief Beard responded that Ray Korber is still working with them on this, and noted that it is an lengthy process because this is a state approval.

Paul Beaudin asked the Board if they decide to take on the additional levee embankment as discussed earlier tonight; he would like to see this go before a public hearing to allow the taxpayers to weigh in.

Paul Beaudin asked the Board if they have had a chance to speak with Jay Scambio about opening up the parking lot river access points at Loon Mountain. Burbank responded that Scambio is not interested in opening up these access points because there has been an abundance of trash and disrespect of these swimming areas along the river.

V. NON-PUBLIC Session Pursuant to RSA 91-A:3:(III) (c,e) Joe Chenard Litigation & Personnel Matter

MOTION: "To go into Non-public session pursuant to RSA 91-A:3 (III) (c,e)"

Motion: Tamra Ham

Second: OJ Robinson

All in favor.

The BOS went into Non-public session at 6:40 p.m.

MOTION: "To re-enter public session."

Motion: OJ Robinson

Second: Jayne Ludwig

All in favor.

The Board came back into public session at 7:15 p.m.

VI. OLD BUSINESS (cont'd)

Y-Birch Kids, LLC Abatement Assessment Refund Amounts

Chairman Robinson explained that the Selectmen made a motion at their July 20th Board meeting to abate taxes for Y-Birch Kids, LLC, Map 121 Lot 039 as a result of a non-meeting with Town Counsel (7/20/20) in an effort to resolve an ongoing litigation. The Board had voted on the assessments; however, they did not have the exact figures. Robinson made the following motion to approve the Y-Birch Kids, LLC abatements as follows:

MOTION: "To abate taxes to the Y-Birch Kids LLC Map 121 Lot 039, 6 Yellow Birch Circle based on the following assessments: 2016 Refund: Over-payment \$16,570 + Interest \$3,576.80 for a total refund of **\$20,146.80; 2017 Refund: Over-payment \$8,065 + Interest \$1,288.77 for a total refund of **\$9,353.77**, 2018 Refund: Over-payment \$5,621 + Interest \$556.60 for a total refund of **\$6,177.60**, 2019 Refund: Over-payment \$2,872 + Interest \$118.91 for a total refund of **\$2,990.91**. The total amount of refund to Y-Birch Kids, LLC = **\$38,669.08**."**

Motion: OJ Robinson

Seconded: Jayne Ludwig

All in favor

VII. ADJOURNMENT

After review of the weekly payables, and with no further business to attend to, the Board made the following motion:

MOTION: "To adjourn."

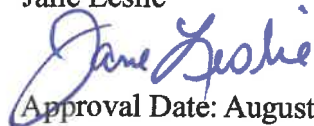
Motion: OJ Robinson

Second: Tamra Ham

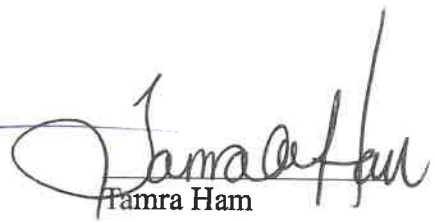
All in favor.

The meeting adjourned at 7:20 p.m.

Respectfully Submitted,
Jane Leslie



Approval Date: August 17, 2020


Chairman O.J. Robinson
Tamra Ham
Jayne Ludwig

- Riverside Cover Stone Grouting: The Sponsor grouted between the cover stones in the lower courses of cover stone, with approval from USACE. During the inspection, USACE noted that small diameter woody vegetation was left in place between the cover stones and grout was placed around the vegetation. The vegetation may result in cracking or long-term deterioration of the grout. The Sponsor should monitor these locations for deterioration and repair or replace the grout as required.
- Knee Wall: The recently-constructed knee wall showed minor signs of cracking and spalling. Develop a monitoring program and repair cracks and spalls as required to ensure performance of the wall.
- O&M Manual: The Sponsor is currently updating their O&M Manual and should provide a copy for USACE review once drafted.
- Culverts/Discharge Pipes: We understand that the condo association for the adjacent condominium complex has performed a video inspection of the corrugated metal pipe (CMP) drain that connects the condominium parking area drainage to the drainage ditch along the landside toe of the levee embankment near the southern end of the embankment. If the pipe is in poor condition, an unfiltered exit would be provided for seepage passing beneath the levee, possibly resulting in erosion of the levee embankment foundation soils and undermining of the levee. Provide USACE with the inspection report for review.
- Condominium Inspections: A monitoring program has been drafted by the Sponsor for inspection of the structure's foundation, as it is considered to be within the levee cross section. Provide USACE with the baseline inspection report and update USACE on plans of the monitoring program.
- Semi-Annual Reports: Start submitting semi-annual reports as required by the O&M manual. The reports should include a summary of work performed, significant flood events and any other information pertinent to the operation and maintenance of the system over the reporting period.
- Levee Extension: The federally-constructed levee embankment ends at approximately levee Sta. 14+48, but the existing embankment extends downstream to approximately Sta. 17+00. The non-federally-constructed levee embankment from Sta. 14+48 to Sta. 17+00 is not currently in the PL84-99 Rehabilitation Program, so USACE is not authorized to repair this portion of the levee embankment if it was damaged during a flood event. However, the Sponsor can apply for the non-federal portion to be included in the PL84-99 Rehabilitation Program, provided the Sponsor can demonstrate that the non-federal portion was designed and constructed in accordance with USACE design standards and provided the sponsor maintains the non-federal portion of the



embankment in accordance with USACE standards. USACE will contact the Sponsor to discuss the application requirements.

b. Risk Estimation

There are potential life safety and economic risks associated with living and working behind any levee system, regardless of how well the system was designed, constructed, and maintained. For example, all levee systems have potential risks associated with overtopping. Unlike dams that are designed to not be overtopped, levee systems are designed for specific water levels associated with a design event. As a result, it is possible for a levee system to experience water levels above the design water level and be overtopped.

The Corps of Engineers assessed the East Branch Pemigewasset River Right Bank FDR System in 2015 using a screening level risk estimation tool. The purpose of the risk estimation was to evaluate the magnitude of potential risk to the public associated with a number of potential failure modes commonly associated with levee systems and to identify any potential risk drivers that require action to mitigate the risk. The inspection program in combination with the risk estimation tool provide valuable information to all stakeholders involved in managing the flood risk of a levee system.

The East Branch Pemigewasset River Right Bank FDR System provides significant value to the Town of Lincoln, reducing the life-safety and economic risk to the people living and working behind the system. Results of the screening showed that the system is likely to withstand water to the top without breaching, but may sustain significant damages. However, there is concern that if the water were to flow over the levee, it could cause erosion on the backside slope and create a breach. It is important to note that overtopping is possible. According to the USGS river gage and USACE calculations, the levee may have overtopped without breaching by 1.5 feet in August 2011 at the upstream section of the embankment. A potential failure of the system could result in economic damages over \$2,000,000 and could involve significant loss of life. The screening level risk assessment and routine inspections identified the key risk drivers listed below that require action. The key risk drivers requiring action are grouped into the three key elements of risk:

Hazard (East Branch Pemigewasset River):

- No risk driving failure modes requiring action were identified.

Performance (Levee System including all pertinent structures):

- The most significant risk driver for the levee system is overtopping. Based on calculations performed from the USGS gage during the levee screening risk assessment, the upstream section of the levee may have overtopped or reached near top of levee during the August 2011 event.

D'AMANTE COUSER PELLERIN & ASSOCIATES, P.A.

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RAYMOND P. D'AMANTE *
BRYAN L. PELLERIN **

RICHARD B. COUSER (1941-2008)

* ALSO ADMITTED IN NY AND CA
** ALSO ADMITTED IN MA

July 31, 2020

townmanager@lincolnnh.org

Butch Burbank
Town Manager
Lincoln Town Hall
148 Main Street
Lincoln, N.H. 03251

RE: Marcoccio Lot Line Adjustment
45 Beechnut Drive
Lincoln, N.H. 03251

Dear Butch:

This letter is to confirm a request to the Lincoln Planning Board on behalf of Mike and Marian Marcoccio of 45 Beechnut Drive, Lincoln, New Hampshire for a Lot Line Adjustment along Beechnut Drive in front of their permanent home in Lincoln.

I understand you have visited the property with some of your staff and have reviewed the situation and the Marcoccio's request.

Historically, when originally constructed, Beechnut Drive terminated in front of the Marcoccio home (long before they purchased the home) with a traffic circle. When the road was extended, the southerly portion of that circle in front of the Marcoccio home was abandoned.

As you have observed on site, that portion of the pavement for the circle on the Marcoccio's lot was long ago removed and the area was graded, loamed and seeded.

Butch Burbank
Town of Lincoln
July 31, 2020
Page Two

Only recently, the Marcoccios became aware that the circle in front of their property is still shown on the plans as Town Property, although the area is in the landscaped portion of their front yard.

We understand that during your visit to the Marcoccio property with staff, you all concluded that the portion of the abandoned circle in front of the Marcoccio's property is of no further use to the Town.

We believe that area is of nominal or no value to the Town. The Lot Line Adjustment will reflect the reality on the ground of the current road and the Marcoccio lot.

A portion of the drainage along the south side of Beechnut Drive for the road and the Marcoccio lot continues to drain in the swale on the south side of Beechnut Drive. That drainage right to the Town has been established and will continue. It can be reserved in the Town's deed to the Marcoccios.

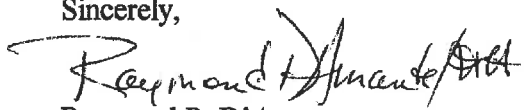
We ask the Board of Selectmen to approve the Lot Line Adjustment at no cost to the Marcoccios.

If you desire any further information for the Monday, August 3, 2020 Board of Selectmen's Meeting, please let me or Mike and Marian Marcoccio know.

Thank you and the Board of Selectmen in advance for your time and consideration of this rather unusual situation.

With best regards,

Sincerely,


Raymond P. D'Amante

RPD/jth

cc: Mike and Marian Marcoccio (via email)

C:\Dropbox\Office\Estates\Marcoccio\Town of Lincoln Ltr.wpd