

LINCOLN BOARD OF SELECTMEN'S

MEETING MINUTES

SEPTEMBER 28, 2020 – 5:00PM

LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN, NH

(THE RECORDING OF THIS MEETING CAN BE FOUND ON YOUTUBE)

APPROVED

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

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

Public Present: Roger Harrington, Renee Blood, Dennis Ducharme, Paul Beaudin, Debbie Celino, James Welsh, Marian Marcoccio, Victoria Martin, Raymond Correale, and Dave Beaudin

Public Present via Zoom Video Conferencing: Michael Marcoccio

I. CALL TO ORDER

Chairman Robinson called the meeting to order at 5:04 pm.

II. APPROVAL OF MEETING MINUTES FROM PREVIOUS MEETING

MOTION: "To approve the BOS meeting minutes of September 21, 2020 as presented."

Motion: Tamra Ham

Second: Jayne Ludwig

All in favor.

MOTION: "To approve the Non-public BOS meeting minutes of September 21, 2020 as presented."

Motion: Tamra Ham

Second: Jayne Ludwig

All in favor.

III. 2nd PUBLIC HEARING – PROPOSED LAND TRANSFER/LOT LINE ADJUSTMENT

Chairman Robinson opened up the public hearing and explained that this is the second of two (2) public hearings required in accordance with RSA 41:14 **Acquisition or Sale of Town-owned Land, Buildings, or Both**. The first public hearing was held on September 14th for Michael and 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 where their land meets the road (*see attached*). Robinson explained that this is a small piece of semi-circle land that sits above the culvert on Beechnut Drive, and it is owned by the Town. Robinson opened up the discussion for any questions or public comments

MOTION: "To open up the Public Hearing."

Motion: OJ Robinson

Second: Tamra Ham

All in favor.

Paul Beaudin asked if a title search has been done to confirm that the Town owns the land. Robinson responded that they have not, although this is a condition, but not a requirement prior to the public hearing. Robinson summarized the following conditions as outlined at the first Public Hearing (9/14/20): (1) there should be a water and sewer easement to repair any underground water and sewer lines (if necessary), (2) a drainage easement, (3) there should be a clear title (title search), and the Marcoccio's should be required to obtain title insurance, (4) valuable consideration (sold for a dollar amount), and, (5) this lot line adjustment should be done at no cost to the town (e.g., survey, attorney fees, transfer tax etc.). Marian Marcoccio commented that she has obtained an existing conditions survey of Beechnut Drive from surveyors, Sabourn & Tower (*see attached*) which was surveyed in December, 2015 & January, 2016. Robinson noted that this survey does *not* detail the dimensions of where the new lot line is going to appear,

and this information would have to be added in by a surveyor.

Jim Welsh asked if there is any drainage that will need to be maintained, and if this would now become the buyer's responsibility? Robinson responded that the town's water/sewer, and drainage for Beechnut Drive may require that the Town has the right (easement) to dig onto the Marcoccio's land in the event that the town needs to repair the sewer, however, the Marcoccio's are *not* responsible for the town water/sewer, or drainage for Beechnut Drive. Robinson further explained that the Marcoccio's are responsible for their driveway, and their lawn. Town Manager Burbank added that the homeowner would be responsible for the culvert that goes across their driveway. With no further public discussion, the following motion was made:

MOTION: "To close the Public Hearing."

Motion: Jayne Ludwig

Second: Tamra Ham

All in favor.

Selectman Ludwig commented that if all of the conditions discussed tonight are met, she would be fine with selling this piece of land to the Marcoccio's. Selectman Ham ran a quick calculation based on the 2014 land sale that the Town had done with the East Spur Road property, and came up with \$217 as a sale price. Ham noted that this figure is based on 2014 prices, and questioned how they would calculate the inflation on this land to align with current land valuation. Town Manager Burbank remarked that in light of the additional costs involved for the Marcoccio's (legal, survey, transfer tax etc.) the \$217 appears to be a reasonable price for this tiny piece of land. The Board was in agreement that the \$217 would be a practical price, and Chairman Robinson noted that this was the same price that the Board had charged in 2014 which was calculated on a per square foot basis.

MOTION: "To proceed with the transfer of this parcel of land with a sale price of two hundred and seventeen dollars (\$217) subject to any water, sewer, and drainage easements that are necessary."

Motion: OJ Robinson

Second: Tamra Ham

All in favor.

Robinson added the following as a side note: (1) the water/sewer/drainage easement should be reviewed with DPW Director Hadaway to ensure that everything is included (and nothing is excluded), (2) a title search that shows Town ownership, and a clear title to transfer this piece of land, (3) the buyer will be paying for a survey, title work, drafting of deed, and transfer/recording fees.

IV. RIVERWALK RESORT at LOON MOUNTAIN PHASE 2: TIMING AND PAYMENT OF FEES (*Water/Sewer/Bedroom Impact Fees and Permit Fees*)

Chairman Robinson explained that the Board met with Riverwalk Developer, Dennis Ducharme last Monday (9/21/20) to discuss negotiating the Land Use Planning Application (LUPA) fees, as well as impact fees (water, sewer, bedroom) for Phase II of the Riverwalk Resort project. Robinson explained that the Board will be making a decision on negotiating a fee for the LUPA application which has historically been a \$50 fee, (revised 7/21/20) and will now cost Ducharme \$15k. Chairman Robinson explained the Board's philosophy when they revised the previous \$50 LUPA fee, and explained that they had realized that it was costing the Town and taxpayers a lot of money in staff time and resources that the original \$50 fee was not covering. Ducharme is looking to negotiate a reasonable application fee somewhere between \$50 and \$15k.

Selectman Ham had commented during the previous Board meeting that the Riverwalk project consisted of three (3) phases, and had suggested that they charge the \$15K application fee for all three phases,

(Ducharme originally paid \$50 for Phase I) and the remaining two (2) phases could be billed at \$7,500 for Phase II, and \$7,500 for Phase III.

Selectman Ludwig commented that she has spent a good deal of time thinking about this, and disagrees with Ham's recommendation to bill Ducharme \$7,500 for Phase II and \$7,500 for Phase III. Ludwig explained that after reviewing two (2) town staff member's salaries in the town office, she has determined that the \$7,500 would only cover costs for 3 1/2-4 weeks' worth of gross salary time. Ludwig was also concerned that if you negotiate this fee for one-person, this should be the cost for everyone. Ludwig added that she would be willing to decrease the \$1.00 per \$10k of ECC to \$.75 per \$10k of ECC, but she did not think that \$7,500 even came close to meeting the needs of the required work that needed to be done.

Selectman Ham disagreed that the \$7,500 wouldn't cover staff hours, and noted that town staff would not be working 40-hours a week on Ducharme's project. Ham explained that she understands Ludwig's point, but did not feel that this was a fair assessment. Robinson agreed with Ham, and did not think that town staff would cumulatively be spending 40-hours a week working on the Riverwalk project.

Selectman Ludwig asked Ducharme how many rooms he had in one building? Ducharme responded that his first building holds 89-rooms (Phase I), Phase II will have 66 rooms, and the last building (Phase III) will have 20-22 rooms (total rooms cannot exceed 170 according to the Master Plan).

With no further discussion on the Land Use Planning Application fees, the following motion was made:

MOTION: "To keep the \$15k application fee for Riverwalk with half of it payable now (\$7,500) and the other half (\$7,500) payable upon the application of Phase III."

Motion: OJ Robinson

Second: Tamra Ham

Motion Carries.

***Opposed:* Jayne Ludwig**

Chairman Robinson addressed the water/sewer impact fees for the Riverwalk project, and Ducharme's request to schedule out his payments. Robinson explained that at the onset of Phase I of the project, Ducharme had paid \$150k towards the \$468k total impact fees, and the balance was paid out in a series of 3-4 installment payments (construction draws) prior to the opening of the Riverwalk. Ducharme is requesting a similar arrangement for Phase II of his project.

Selectman Ham asked Ducharme if he was looking to postpone the initial deposit on the impact fees until after he has heard back from NH-DOT (Dept. of Transportation) on their comments on the *Traffic Impact Study*. Ducharme explained that he would like submit his building application along with the plans and \$7,500 within the next 2-3 weeks, but he does not want to commit to the impact fees until such time that he has a commitment from DOT. Ducharme is willing to forfeit the \$7,500 if for some reason DOT fails to make a commitment and requests a mediation process (e.g., DOT requires a roadway be built to accommodate the hotel traffic). Chairman Robinson did not see any problems with this, and noted that if it looks like the time-frame may exceed one-year, Ducharme should come back before the Select Board. Selectman Ham added that Dennis has been an asset to the Town of Lincoln and always proved to be a fair and honest person to work with over the course of many years, and she is fine with waiting for him to hear back from DOT before committing to impact fees.

The Board thanked Mr. Ducharme, and he departed the meeting.

V. APPOINT BUILDING COMMITTEE

Chairman Robinson explained that the CIP Committee has been discussing that there is a relatively urgent need to accommodate the vastly growing Police Department with a larger facility, and noted that the CIP Committee has begun putting money aside for the design/engineering of a new Police Station. During these discussions, it was also noted that the Fire Department is also in need of repairs and thought it may make sense to integrate the Police/Dispatch and Fire Department under one roof. Robinson further explained that the committee has also discussed the prospect of Town Hall relocating to this facility as well.

Robinson wanted to begin the planning process for this endeavor, and wanted to simply introduce this idea to the public; obtain input (if any), and appoint a committee to begin the process of exploring what this facility may look like. Selectman Ham questioned how many years out the CIP was funding this project? Robinson responded that there is currently enough money in the CIP to begin moving on this project in 2021 (hiring engineer/surveyor). Robinson further explained that they are considering building this facility on the town-owned land at the old airport property on the bottom of Mansion Hill.

Selectman Ludwig commented that there are many other infrastructures needs and town business that needs to be taken care, and does not feel that this is the time to discuss building a Police/Fire Department. Ludwig asked Chief Morris if he really needs a new police station? Chief Morris responded that the town needs to determine if it wants to be a small town, or a town that welcomes thousands of visitors on any given week. There was a brief discussion on the town's current revitalization programs with town streets, sidewalks, and infrastructure. Robinson reminded the Board that it will ultimately be the town's residents who will be voting at Town Meeting to either say *yes* or *no* to a new municipal building, however, his goal tonight was for the Board to give the "go-ahead" for a committee to begin looking at this, and to involve the community in the process of making this decision.

Selectman Ham thought it was a good idea to focus on accommodating the town's public safety and getting ahead of it with a Building Committee that could explore the concept of if/when to move forward with building a Safety Services Building.

Paul Beaudin commented that every project that the town has done (e.g., Skateboard Park, Water Meters, Town Building) begins with a need's assessment, and typically entails a lot of hurdles before it even gets to a Town Meeting vote, which could take years. Chief Beard added that there may also be grants available that the Police and Fire Departments could apply for that would offset a portion of the costs.

Jim Welsh commented that if you put the Town Building, Police and Fire Departments all together, the Town could then sell the current Town Hall building property and apply those funds toward a new facility. Town Manager Burbank noted that the Police Department currently has no fresh air intakes downstairs, and staffing has outgrown the department which accommodates both male and female officers. Selectman Ludwig felt that if the Police Department would hire additional officers, with some in charge of the town's code enforcement, she would fully support a new facility. Robinson suggested that they bring the matter up of hiring an additional full-time code enforcement officer during Budget Committee discussions.

The Board discussed the number of members who will comprise the Building Committee, and suggested the Selectmen put out a call out for interested members to submit a letter of interest to join the committee. The Board agreed that 5 members (1 Selectmen's Rep + 4 community members) would be a good size committee with input from the Planning Dept., Town Staff, and Town Manager. The Board agreed to appoint the Selectmen's Rep. when they appoint the committee members.

Robinson formally stated for the record that the Board of Selectmen are putting out a call to all interested residents who would like to be part of the new Building Committee, and to explore the options for a new

Municipal Building to house the Police Station, possibly the Fire Department, and Town Office Building. This committee will look at the existing building and determine what will be needed for a new facility.

VI. OLD/NEW BUSINESS

Town Manager's Report

Lower Black Mountain Road (LBMR) Update

Town Manager Burbank explained that he has received a letter from an attorney representing a homeowner on lower Black Mountain Road, and it has been forwarded to the town's counsel. Chairman Robinson said he would like to discuss this further in Non-public.

Water Ban/Drought Update

Town Manager Burbank explained that the water ban that the Board voted on last week (9/21) was challenged by resident Mike Beaudin, who stated that the ban was not properly noticed to the public. Burbank explained that the ban could not be enforced until 3-days after it was posted in a newspaper. At this time, the ban is in full effect under the adopted ordinance. Burbank added that since the ban, water usage has dropped 100-150k gallons, and averaging 700k gallons a day. Water Plant Operator, Dave Beaudin commented that Mike Beaudin's complaint was not a valid complaint because the first ban (8/24) that the Board passed had to do with private wells, and the town had the right to regulate anyone on a private well. The second ban, Env-DW 503 (9/14) that the Board voted on did not require a public notice because it had to do with the public water supply. Beaudin explained that only the adoption of RSA 41:11-d required a three-day public notice prior to it going into effect, and the Town was fully in compliance with the previous bans that were enacted.

Fire Ban

The Governor's Council signed a Proclamation prohibiting open fires and smoking in and near woodlands (*see attached*). This ban prohibits all fires on public lands (except in campgrounds). This ban is the result of current severe drought conditions and the potential for large fire activity.

NEW BUSINESS

Weston & Sampson Presentation

Chairman Robinson asked if Weston & Sampson would be presenting in person or via Zoom on Thursday, October 1st. Town Manager Burbank responded that Weston & Sampson would be participating via Zoom at 3pm to the Water Committee and Board of Selectmen (*joint meeting*).

Signage at the entrance to Citizen's Bank/Plaza Parking Lot (Route 112 entrance)

Selectman Ham asked if the Town was responsible for the signage at the entrance to the Citizens Bank parking lot (off Route 112). Town Manager Burbank responded that Paul Bartlett (property owner) is responsible for that signage. Ham explained that she almost witnessed an accident the other day because the One-Way and Wrong Way signage as you enter the plaza parking lot is dull and faded, and cars may not be able to read that it is one way. Ham asked Burbank to reach out to Mr. Bartlett to see if he could replace the sign, and possibly add an additional sign on the other side of the driveway entrance.

OLD BUSINESS:

Maple Street

Selectman Ludwig asked if Maple Street was going to be widened as a result of the road repair project. Town Manager Burbank responded that the width of the road would be staying the same.

Riverfront Park

Selectman Ham asked if there were any updates on the Riverfront Park. Town Manager Burbank responded that the town has received approval for the parking lot at the old Burndy site, and must now provide calculations to DES on the loading on the site, and how much of the site will have to actually be excavated. Burbank explained that once the proper permits are obtained, the town can begin the tree cutting process. Chairman Robinson added that he had attended the meeting with Town Engineer, Ray Korber and an environmental consultant, and the next steps will entail the finalizing of the parking lot design, and obtaining DES approval. Robinson explained that they will be doing *spot environmental testing* on the skateboard park/walking path area, and if all goes well (environmentally safe) they will be able to begin cutting trees, which is the same for the path to the kayak launch (the middle area of the park will not be developed right away). Robinson noted that one of the things discussed with the engineers was to make the entrance to the park come in between Linwood Plaza and Citizens Bank due to the relocation of the parking lot. Selectman Ham commented that the town does not own this property. Robinson responded that the Board may want to have this discussion with Paul Bartlett and Linwood Plaza (property owners) and either get a right-of-way on their land, or put a short town road that leads to the Riverfront parking lot. The current design has vehicles coming in through the parking lot at Jean's Playhouse, and then driving up to where the parking lot will be. Ham thought this was definitely worth the conversation with the property owners.

Castlebury Craft Fair

Selectman Ludwig asked if Terry Mullen has applied for a permit to hold the craft fair up at Loon Mountain. Town Manager Burbank responded that he wasn't certain if Terry Mullen had reached out to Loon or not about holding the craft fair there, and noted that she has not reached out to Town Hall.

Street Sweeping

Selectman Ludwig asked if the town has ever considered purchasing their own street sweeping machine? Town Manager Burbank responded that this has never been discussed during his tenure with the town. There was a brief discussion about the costs for new/used street sweepers, which could range well-over \$100k.

Public Participation

Victoria Martin addressed the Board and explained that she was advocating for the children in the community, and requesting that the Town commit to opening the Kanc Rec Ski Area this winter season regardless of what the Linwood School programming looks like (in-person, hybrid, or remote learning). Martin went on to explain that today there is a greater understanding of how the Coronavirus is spread, and indoor environments are much more problematic than the outdoors. Martin further explained that she was concerned that the Selectmen and Recreation Department would be opening the Kanc Rec this winter contingent upon what the school does, and she does not feel that these two should be associated. Martin feels that the Kanc could be opened 2-hours at a time and operated as an "outdoor only" activity, with the lodge remaining closed (bathrooms have a separate outdoor access). Martin added that a "walk-up" window could be installed (similar to a store drive-thru) and volunteered the services of East Branch Builders to purchase and install the same prior to the start of the winter ski season (pre-bagged candy/tickets could be purchased at the walk-up window). Martin addressed those who may be concerned with children being outdoors for extended periods of time and having no place to warm-up, and noted that they could dress as they do when they participate in the school's winter activities up at Loon (only the very small children go inside the lodge up at Loon to warm up). Martin emphasized the importance of socialization, and the lifeline that the Kanc Rec represents during times when/if the school transitions to remote learning only, and explained the dangerous effects of social isolation and the psychological distress that children will suffer over the long winter months. Martin's last point concerned significantly increasing

the non-resident ski passes/tickets based on the amount of traffic and visitors that Lincoln saw this past summer, and the increase in out-of-state traffic utilizing the North Country's outdoor activities, and feels that with Loon limiting the amount of tickets they will be selling this winter season, there may be a significant increase in visitors at the Kanc (if it opens this winter).

Martin questioned who makes the decision on whether or not the Kanc will open up? Selectman Ham responded that both Lincoln and Woodstock Board of Selectmen make this joint decision because it falls under the Recreation Department. Martin thought it best to have this discussion now, as she feels that this may be the only safe outdoor activity for the children this winter. Martin explained that she would follow-up with an email to the Board summarizing tonight's discussion along with links to resources and articles, as well as other community support from residents who feel the same as Martin.

Town Manager Burbank commented that he and Recreation Director, Tara Tower had this discussion last week concerning the opening of the Kanc Rec this winter, and everyone is looking forward to the Kanc's upcoming winter season (as recommended by state guidelines). Selectman Ham noted that the Kanc can also shut down for an hour in the afternoon so that everyone can go home and have lunch, and then return once they are done. Chairman Robinson remarked that if Rec Director Tower and staff were thinking otherwise about opening up the Kanc, they should then have a serious discussion why, and conversation on how to get around any safety concerns that there may be. Burbank added that all decisions will include the Governor's recommendations along with the CDC, which have not been released yet.

Selectman Ludwig asked Martin if she had any thoughts on the children trick-or-treating this Halloween. Martin responded that she was not concerned with trick-or-treating at all because it is an outdoor event, and the public should continue to wear masks.

Raymond Correale – 35 Goodbout Road (M/L 107-0260)

Town Manager Burbank explained that Mr. Correale has constructed a boathouse addition onto his garage on his property (35 Goodbout Road) that extends into the setback area, and is also within the town's right-of-way (*see attached map*). After consulting with the Planning Department, Burbank explained that Mr. Correale has the following options: (1) to move the building, (2) to purchase this piece of town-owned land, and, (3) go before the ZBA for a waiver. If all of this fails, Mr. Correale will have to move the structure. Selectman Ham commented that she would like to take a ride to Mr. Correale's property to see in person what they are talking about. Burbank remarked that part of the issue is that Mr. Correale did this building without a permit, otherwise, the town would have caught this prior to it being constructed. Robinson clarified that Mr. Correale can only apply for a waiver from the ZBA for building in the setback, not for the portion of the structure that is built on the town land. Correale asked the Board if he would be able to purchase this piece of land from the town. Ham responded that she does not want to do anything until she sees the property in person, and asked Mr. Correale why he would build a garage without a permit, if he was aware that he needed it (building permit) prior to adding onto his garage. Correale responded that he was aware, and is a builder in Boston, but did not think it was a big deal because he was not building a "living" space. The Board thanked Mr. Correale, and explained that they would address this further after the Board visits his property.

Paul Beaudin Request for a Re-Hearing of September 16, 2020 ZBA Variance Request

Chairman Robinson read Paul Beaudin's request for a re-hearing of the Lincoln ZBA Decision for 11 Queens Way (Map 130, Lot 089) (*see attached*). Chairman Robinson explained that he is familiar with the ZBA's Rules of Procedure for voting on a variance, and the committee should have discussed and voted on the five (5) criteria for a variance, however, the Board only voted to approve the variance (without a discussion on the criteria). Paul Beaudin explained that he did not feel that the Board was aware that they were supposed to answer these questions individually as part of this process. Beaudin noted that the

application was for a stone wall that was within the setback. Selectman Ludwig read an email received from the town's attorney, Peter Malia as follows:

Carole –

RSA 677:2 is “Motion for Rehearing of Board of Adjustment, Board of Appeals, and Local Legislative Body Decisions.” It says:

*“Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, **the selectmen, any party to the action or proceedings, or any person directly affected thereby** may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor; and the board of adjustment...may grant such rehearing if in its opinion good reason therefor is stated in the motion.”*

As a board member, I don't think Paul can request a rehearing. If he's an abutter, then he would qualify.

I think Paul should make a written request to the selectmen to file a motion for rehearing, and explain why. Time is of the essence, so this should be on the agenda for the next selectmen's meeting, if Paul wants to make the request. If the request is based on the fact that the board did not consider and vote on each of the variance criteria, then the selectmen could file a motion for rehearing for that reason – not necessarily because they think the board got the decision wrong, but because they want the board to vote on each of the variance criteria. However, this is entirely up to the selectmen. They could decide to decline Paul's request and let the decision stand.

Peter

Chairman Robinson commented that it was his inclination to err on the side of caution, particularly because rules were not followed, and this could result in a complaint and/or litigation with an abutter or future owners.

MOTION: “The Board of Selectmen appeal the September 16, 2020 decision of the ZBA on the grounds that they did not follow their rules of procedure.”

Motion: OJ Robinson

Second: Jayne Ludwig

Motion carries.

Abstained: Tamra Ham

Letter Received from Richard Sakakeeny

Chairman Robinson read an email received from Richard Sakakeeny in reference to the levee extension (*see attached*). Robinson responded that Mr. Sakakeeny is asking for two (2) things: (1) the town forward him a copy of the draft Operations and Maintenance Manual (for the levee) which is public information, and, (2) the Town contact the US Army Corp. of Engineers (USACE) to determine if the repairs made by the Town to the levee extension meet the USACE design standards enough to be included in the PR-8499 Rehabilitation Program. Robinson explained, that basically Mr. Sakakeeny is asking the Town as the sponsor and the holder of the design to find out if it meets the standards. Town Manager Burbank commented that he feels the town should seek legal advice on this matter and the board could discuss this in non-public. Burbank said he would have the draft of the Operation and Maintenance agreement sent to Mr. Sakakeeny.

VI. NON-PUBLIC Session Pursuant to RSA 91-A:3:(III) (e) legal levee issues, CRVI lawsuit

MOTION: “To go into Non-public session pursuant to RSA 91-A:3 (III) (e)”

Motion: OJ Robinson

Second: Tamra Ham

All in favor.

The BOS went into Non-public session at 7:00 p.m.

MOTION: "To re-enter public session."

Motion: Jayne Ludwig Second: Tamra Ham

All in favor.

The Board came back into public session at 7:29 p.m.

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

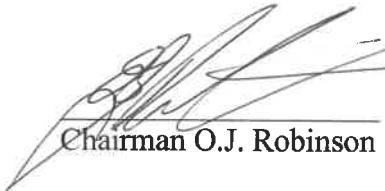
Second: Tamra Ham

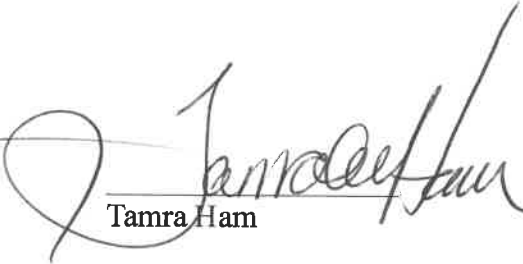
All in favor.

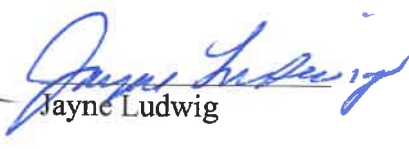
The meeting adjourned at 7:30: p.m.


Respectfully Submitted,
Jane Leslie

Approval Date: October 5, 2020

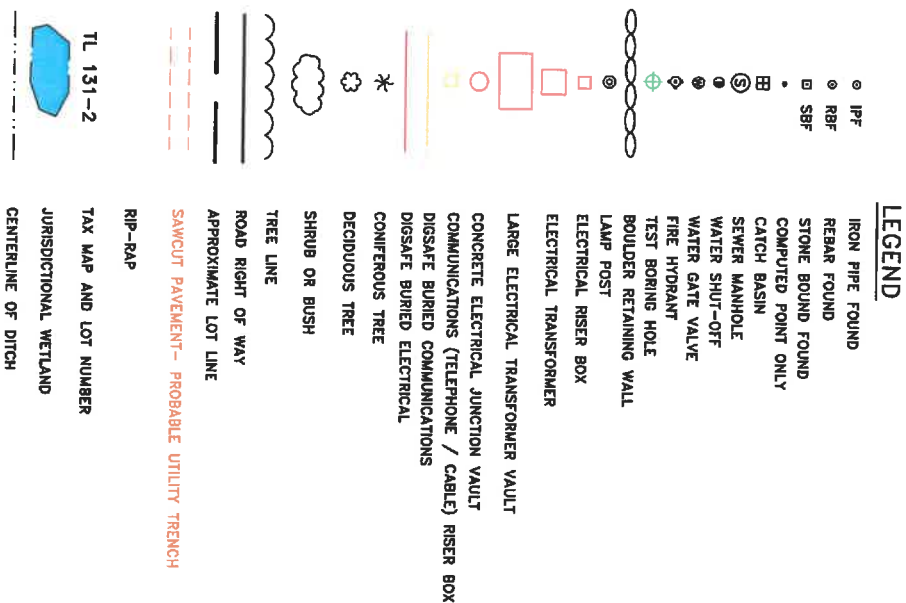

Chairman O.J. Robinson


Tamra Ham

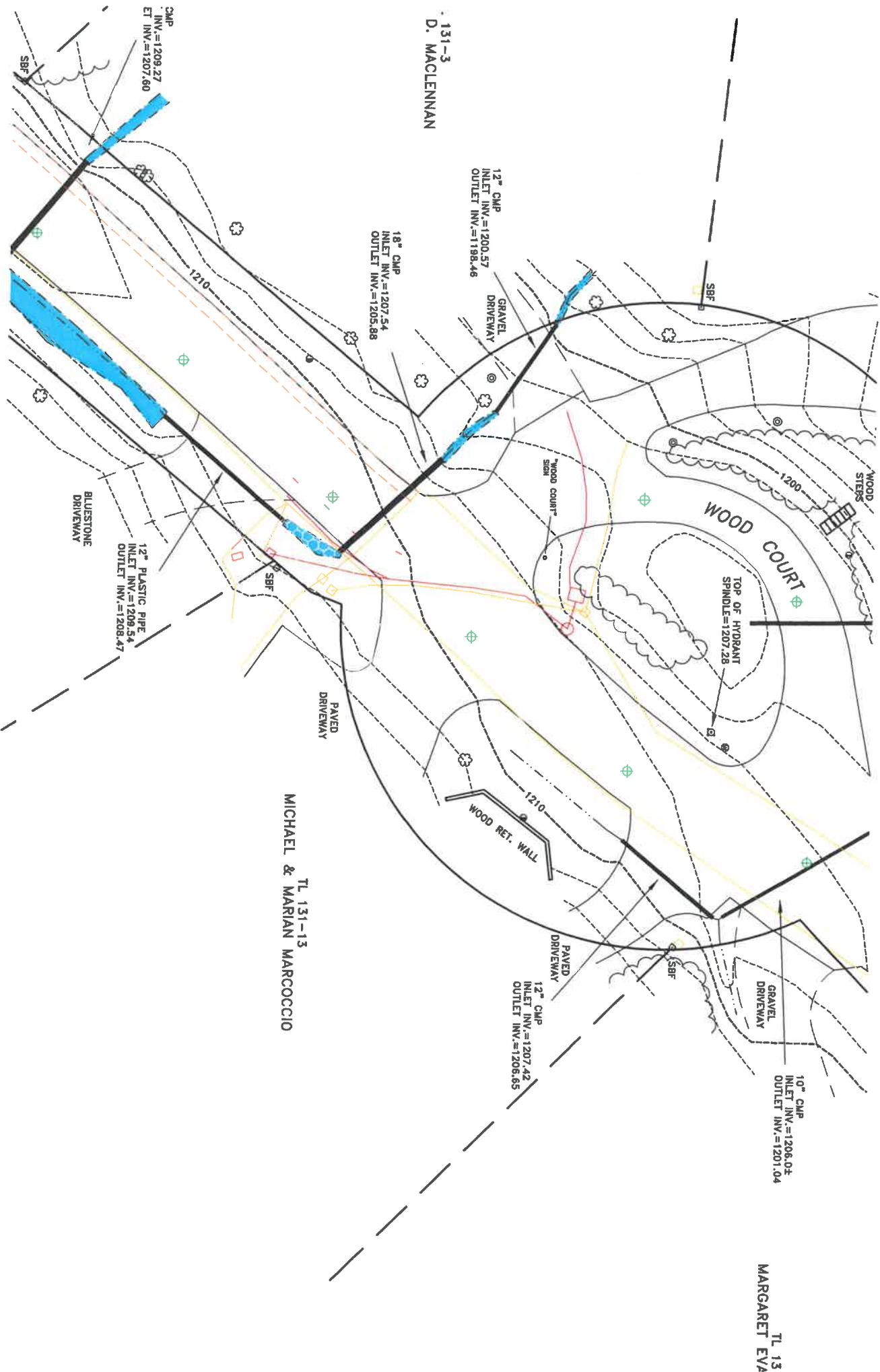

Jayne Ludwig

EXISTING CONDITIONS SURVEY OF BEECHNUT DRIVE, BROOKWAY STREET, AND A PORTION OF EAST BRANCH DRIVE IN THE TOWN OF LINCOLN, NH SURVEYED DECEMBER 2015 & JANUARY 2016 BY

SABOURN & TOWER
SURVEYING AND SEPTIC DESIGN, PLLC
1022 Daniel Webster Highway
North Woodstock, NH 03262
Telephone: (603) 745-3424



131-3
D. MACLENNAN



TL 13
MARGARET EVA

Date 9/27/2020

From : Paul Beaudin II Vice Chair Lincoln ZBA

To: Lincoln Board of Selectman

Subject: Appeal or request for re hearing of ZBA decision for a request of Variance for 11 queens way (Map 130, Lot 089) Matthew & Donnamarie Tiano

Dear Lincoln Board of Selectman:

I would like to request that you apply for a rehearing of the Lincoln ZBA recent request for variance request for 11 Queens way Map 130 lot 089 that was decided and voted on by the ZBA on September 16, 2020. We as a Board failed to exercise our duty in Accordance with RSA: 674:33 as well as our own rules of procedure adopted 06/08/2011 that we consider and vote on for a variance the following questions.

- A) The Variance will not be contrary to the public interest
- B) The Sprit of the ordinance is observed
- C) Substantial Justice is done
- D) The Value of surrounding properties are not diminished
- E) Literal enforcement of the provisions of the ordinance would result in unnecessary hardship

The Variance was granted without consideration of the above questions being taken into consideration and a vote on each one as has been done for all Variance request that have come before the Lincoln ZBA in the past. In our ZBA Rules of Procedure as well as RSA: 674:33 we are required to answer and vote on these questions before approval of a Variance. I believe there are many reasons why this happened but to deliberate on them would serve no one and only cause delay in the appeal for a rehearing.

I have brought this to the attention of Carole Bont the Town Planner who sent it to the Town Attorney for his review. The reason I am requesting this from the Board of Selectman is that Peter Malia was not sure that I could request such an appeal however the Board of Selectman could as is indicated in RSA: 677:2. Time is of the essence in your filing of this request for a rehearing so I would appreciate your taking this up at tonight's Lincoln Board of Selectman's meeting.

Respectfully requested:



Paul Beaudin II

Lincoln ZBA vice chair

appeal

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Zoning Board of Adjustment and Building Code Board of Appeals

Section 674:33

674:33 Powers of Zoning Board of Adjustment. –

- I. (a) The zoning board of adjustment shall have the power to:
- (1) Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and
 - (2) Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:
 - (A) The variance will not be contrary to the public interest;
 - (B) The spirit of the ordinance is observed;
 - (C) Substantial justice is done;
 - (D) The values of surrounding properties are not diminished; and
 - (E) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
- (b)(1) For purposes of subparagraph I(a)(2)(E), "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:
- (A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
 - (B) The proposed use is a reasonable one.
- (2) If the criteria in subparagraph (1) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.
- (3) The definition of "unnecessary hardship" set forth in subparagraphs (1) and (2) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.
- (c) The board shall use one voting method consistently for all applications until it formally votes to change the method. Any change in the board's voting method shall not take effect until 60 days after the board has voted to adopt such change and shall apply only prospectively, and not to any application that has been filed and remains pending at the time of the change.
- I-a. (a) Variances authorized under paragraph I shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.
- (b) The zoning ordinance may be amended to provide for the termination of all variances that were authorized under paragraph I before August 19, 2013 and that have not been exercised. After adoption of

The concurring vote of 3 members of the ZBA shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.

In exercising its powers in such appeals, the ZBA may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken; and

SECTION 2. VARIANCE

Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:

- (A) The variance will not be contrary to the public interest;
- (B) The spirit of the ordinance is observed;
- (C) Substantial justice is done;
- (D) The values of surrounding properties are not diminished; and
- (E) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(I) "Unnecessary hardship" means that owing to special conditions of the property that distinguish it from other properties in the area:

(a.) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

(b.) The proposed use is a reasonable one.

(II) If the criteria in subparagraph (I) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The definition of "unnecessary hardship" set forth in subparagraph (E) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance

SECTION 3. SPECIAL EXCEPTION

The ZBA may authorize special exceptions to the terms of the Zoning Ordinance. The ZBA may grant such special exceptions in appropriate cases and subject to appropriate conditions so as to be in harmony with the general purpose and intent of the Zoning Ordinance. If the ZBA finds that all the requirements of the Zoning Ordinance are met, the special exception, subject to any conditions ordered by the Board, shall be granted. If the applicant does not demonstrate that each of the requirements are met, the ZBA shall deny the special exception. The ZBA may attach conditions to the granting of a special exception as may be determined to be appropriate to mitigate the impact of the proposed use on the surrounding properties and to protect the health and welfare of the Town and its residents.

Mr. "Butch" Burbank, Town Manager

September 23, 2020

Lincoln Town Hall

148 Main Street

Lincoln, N.H. 03251

Dear Butch,

Thank you for your prompt reply to my letter of August 27th sent to the Board of Selectmen. Unfortunately, I respectfully take issue with the response as it did not address my request to the Town.

First: Bob Durfee states that I should contact the USACE to determine if the repairs the Town made to the Levee Extension currently meet the USACE design standards to be included in the PL84-99 Rehabilitation Program.

I feel this is both impractical and in fact not procedurally correct. The Town has all the design / construction drawings and is in a much better position to answer any questions the USACE might have. In addition, as you stated in a previous BOS meeting, and as specified in the January 28, 2020 letter to the Town, the Sponsor (Town) of the project should do this.

Butch, I want to again emphasize that what I am asking can be done by the Town with a minimum of effort and virtually no expense. Asking and getting the answer to this question in no way commits the Town to any long term liability.

Second: Bob states that the Owner of the Levee Extension will have to complete and file an OMR Form.

Again, this is not what I requested. I asked "what are the maintenance requirements" (referenced in the USACE January 28, 2020 letter to the Town). The good news is, it appears from your letter that the draft of the Operation and Maintenance Manual (6/22/20 draft) included maintenance recommendations for the Levee Extension. So the Town already has the answer to my question. I would appreciate you emailing these requirements to me at your earliest convenience.

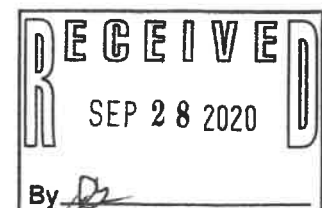
Butch, we have an opportunity here to greatly reduce the potential for significant legal and / or construction costs down the road for both the Town and abutters by taking some low cost actions now. As a taxpayer that has already paid over \$40,000 in taxes to the Town and does not utilize significant Town services, I am not asking for much here. Also, as previously stated, I am willing to discuss entering into a binding joint maintenance agreement with the Town.

Let's work together and put this behind us now!

Regards,



Rich



Town Hall

From: Herbold, Stacey <STACEY.P.HERBOLD@des.nh.gov>
Sent: Thursday, September 24, 2020 2:28 PM
Subject: Drought Update: Drought Intensifies/Last Chance to Conserve

Dear Municipal Contacts: (Please forward to governing board.)

According to the U.S. Drought Monitor, drought is persisting across the state and the majority of Strafford County and parts of Rockingham, Merrimack, and Belknap have been elevated to “Extreme Drought” (D3), the third category out of four categories of drought. Scattered rain showers are expected early next week and the 6-10 day and 8-14 day precipitation probabilities lean toward near to above normal precipitation. According to the U.S. Seasonal Drought Outlook released on September 17, drought is likely to persist over the next three months, but drought intensity is also likely to improve.

This is only the second time since 2000, when the Drought Monitor was implemented, that parts of New Hampshire have experienced extreme drought. When these conditions occurred in 2016, hundreds of private well shortages were reported. Similar to 2016, well shortages are being reported from across the state. As the growing season winds down and cooler temperatures set in, there is only a small window of time left to eliminate non-essential outdoor use in an effort to sustain supplies to meet essential future needs as the drought persists.

NHDES is urging municipalities to implement municipal-wide lawn watering restrictions as authorized by RSA 41:11-d, which allows municipalities, including village districts, to restrict lawn watering activities on private well owners and community water systems within municipal boundaries. Curbing lawn water usage is imperative to sustaining supplies. NHDES is also working with public water suppliers to implement restrictions.

To date, 160 community water systems serving 325,700 people and seven municipalities with a total population of 60,300 have water use restrictions in place. See the [Restriction List and Map](#) for names of systems and municipalities implementing restrictions and a map of drought conditions by municipality.

Drought Update:

According to the [U.S. Drought Monitor](#) released this morning, 8.5% of the state is categorized as “extreme drought” (D3), 80% of the state is categorized as “severe drought”(D2) and 11.5% of the state is categorized as “moderate drought” (D1).

Tip* The [restriction map](#) includes town boundaries and drought categories, making it easy to identify if your municipality is experiencing drought.

All counties are experiencing a 30-day, 90-day, 180-day, and 360-day precipitation departures. Ninety-day departures range from -2.24” in Coos County to -4.58” in Grafton (<https://w1.weather.gov/data/TAR/ESPTAR>).

The majority of the state is experiencing below normal to low groundwater levels. For more information, see the [New Hampshire Groundwater Level Monitoring Report](#) for August 2020. Reports are released monthly.

Forecast and Outlooks:

The short term forecast calls for above normal temperatures, a dry weekend, and a chance for scattered showers at the beginning of the week. Daytime highs will be in the 70s with 80s possible in the southern part of the state ([NOAA National Weather Service](#)).

The 6-10 day outlook probabilities tilt toward above normal precipitation and near normal temperatures. The 8-14 day outlook favors near normal precipitation and tilts toward below normal temperatures ([National Weather Service Climate Prediction Center](#)).

According to the [US Seasonal Drought Outlook](#), over the next three months, drought conditions are likely to improve, but persist across the majority of the state.

Stacey Herbold
[Water Conservation Program](#)
[Water Use Registration and Reporting Program](#)
NHDES Drinking Water and Groundwater Bureau
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095
PH: (603) 271-6685
FAX: (603) 271-0656



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STATE OF NEW HAMPSHIRE
DEPARTMENT of NATURAL and CULTURAL RESOURCES
DIVISION of FORESTS and LANDS
172 Pembroke Road Concord, New Hampshire 03301

SARAH L. STEWART
Commissioner

WILLIAM GUINN
Acting Director

603-271-2214
FAX: 603-271-6488

To: Forest Fire Wardens, Deputy Wardens, Special Deputy Wardens, Fire Departments
From: Steven Sherman, Chief, NH Forest Protection Bureau
Date: September 25, 2020
Subject: State Prohibition on Open Fires and Smoking in and near woodlands

Today the Governor and Council signed a Proclamation prohibiting open fires and smoking in and near woodlands. This was done because of the fire conditions we have and will continue to have as we enter Fall. The drought conditions are severe across the state and wildfire indices are at the point where the potential for large fire activity exists.

What prohibitions are contained in the Proclamation?

...it shall be unlawful for any person in the State to

- Kindle an open fire, including fires built for camping, the burning of debris, or warming, on all public trails or other public property, excluding public campgrounds
- smoke a pipe, cigar and/or cigarette outdoors in or near public woodlands or on public trails
- kindle a category 3 "fire;" a fire greater than 4 feet in diameter or a fire not contained within a ring of fire resistive material

What this means is:

- All fires are prohibited on public lands, except in a campground
- Category 3 fires are banned everywhere, public and private lands
- Category 1 and 2 fires are allowed on private property with a fire permit
- No smoking is allowed in or near public woodlands or on public trails

Also to note: The online fire permit system has been shut down until weather conditions improve.

What Wardens NEED to do:

- Post the Proclamation Signs in public places and at access points to public lands in your town. **A copy of the sign is attached to this letter for you to print and post.**
- Contact public and private campgrounds to discuss fire prevention measures, staffing at campgrounds, and ensure all extra campground requirements are still in place for each campfire.
- Advise your Forest Ranger when fire danger conditions change in your community as well as any permit restrictions in place. While not prohibited in the proclamation, per Res 5601.04(a)(5) Category 1 and 2 permits may be suspended by the Forest Fire Warden if they determine weather conditions to be unfavorable. Res 5608.01 Unfavorable weather conditions shall include, but not be limited to, wind, lack of precipitation, or any other factor which could increase fire hazard

What you need to know for enforcement:

- **227-L:15 Prohibiting Smoking or Kindling of Fires; Penalty**
 - Anyone violating the Proclamation is guilty of a violation under RSA 227-L:15
 - Wardens can issue a Written Warning (DNCR Form 5801) for 227-L:15, Prohibition Smoking or Kindling
 - You can also call the Forest Ranger to follow up with enforcement action. Rangers can issue a warning, violation or Administrative summons with fine amounts from \$124.00 up to \$1,000.00
- **227-L:17 Permits; Damages; Penalties**
 - This can be used specifically for someone burning without a permit
 - Wardens can issue a Written Warning (DNCR Form 5801) for 227-L:17, which has a quick check box on the front of the Warning Form
 - You can also call the Forest Ranger to follow up with enforcement action. Rangers can issue a warning, misdemeanor, violation or Administrative summons with fine amounts up to \$1,200.00
- Definition of Woodlands is found in RSA 227-G:2, XIX. **"Woodland" includes cut-over land, slash, and such other land as bears a sufficient amount of wood growth, wood, weeds, grass, or other growth as to be likely to be burned.**

Payment for time spent by the Warden and Deputies on fire prevention, preparedness, enforcement and suppression are covered under RSA 227-L:22 Municipal Fire Control Payments, and will follow the normal billing procedures with the state cost sharing 50/50 with the municipality. The payment of on-duty personnel is not a billable cost.

This Proclamation will remain in effect until the conditions improve, at which time we will advise the Wardens. The next weeks and maybe even months may be challenging for all of us. Currently the forecast predictions are for October to continue with above normal temperatures and below normal precipitation. We may see some days with precipitation which will offer short term relief (days), but it will take significant rainfall to change the overall situation. Please continue to communicate your needs to your Forest Ranger and we will do our best to assist you.

Sincerely,



Steven Sherman
Chief, New Hampshire Forest Protection Bureau

Encl.: Campground Requirements
Proclamation Sign



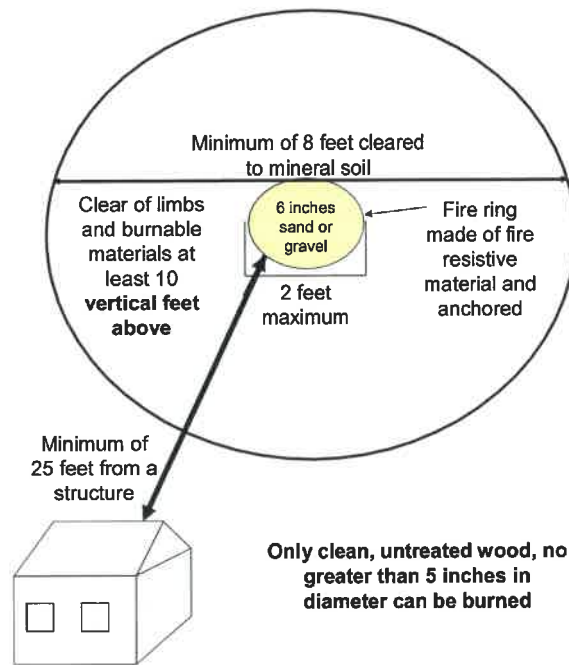
STATE OF NEW HAMPSHIRE
Department of Natural and Cultural Resources
Division of Forests and Lands
FOREST PROTECTION BUREAU



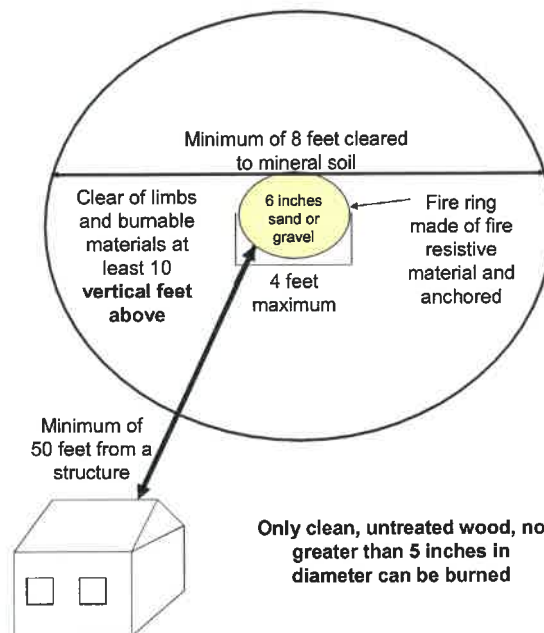
OUTDOOR FIRE REQUIREMENTS FOR PUBLIC & PRIVATE CAMPGROUNDS

1. All outdoor fires require a written permit from the Forest Fire Warden of the town where the fire is to be kindled, any time the ground is not covered with snow. A public campground may obtain a seasonal category I or Category II fire permit for approved fireplaces present at the facility.
2. **"Category I Fire"** means a small controlled fire, such as a camp or cooking fire, no greater than 2' in diameter contained within a ring of fire resistive material or in a portable fireplace. A category I fire, conditions permitting, may be kindled with a permit at any time of day whether raining or not.
3. **"Category II Fire"** means a controlled fire, such as a camp or cooking fire, no greater than 4' in diameter contained within a ring of fire resistive material or in a portable fireplace. A category II fire, conditions permitting, may only be kindled with a permit between the hours of 5:00 pm and 9:00 am unless it is actually raining.
4. All fireplaces shall be approved by the Forest Fire Warden and meet the following recommendations:
 - A) Be on an area cleaned to mineral soil at least eight feet across. Where fires are built on the ground, there should be at least six inches of sand or gravel under the fire.
 - B) Have no limbs or other burnable material within a height of ten feet above the fireplace.
 - C) Fire placed shall be constructed so they can't be moved from their mineral soil area.
 - D) Fireplaces shall not be used for the disposal of waste or rubbish.
 - E) Fireplaces shall be cleaned and the ashes disposed of properly after insuring that they are cold to the touch.
 - F) Before additional fireplaces are added to a campground or camping area, they must be inspected and approved by the Forest Fire Warden.
6. In areas where charcoal grills are used, a well marked container for the safe disposal of ashes from these fires shall be available.
7. Fire protection and suppression equipment such as hand tools, portable pumps and an adequate water supply shall be readily available in all areas where open fires are permitted.
8. In campgrounds/camping areas where entrance and/or exit roads could limit campers' ability to flee an uncontrolled fire; the Forest Fire Warden shall make recommendations for the elimination of such condition(s) to people responsible for the area.
9. Regulations for fires in campgrounds/camping areas shall be posted and available to all campers.
10. Campground and camping area operation shall keep abreast of current fire dangers and be prepared for fire permit restrictions or bans when they are in effect.
11. Failure to comply with all applicable rules and regulations may result in the fire permit being summarily suspended.
12. **ANY** person violating the fire permit law and its provisions, and any person who willfully or recklessly kindles a fire that endangers woodlands, shall be guilty of a misdemeanor punishable by a fine up to \$2,000 and/or up to one year in jail, or both.

SPECIFICATIONS FOR CAMP OR COOKING FIRES (CATEGORY I)



SPECIFICATIONS FOR CAMP OR COOKING FIRES (CATEGORY II)



DUE TO _____

FIRE DANGER

The Governor and Council have proclaimed that there shall be

NO OPEN FIRES

NO SMOKING

IN PUBLIC WOODLANDS

**SEE OFFICIAL
PROCLAMATION
FOR DETAILS**

**Burning Brush Piles is Prohibited – No Fires Allowed on Public Lands
Violators Subject to Fine of up to \$2,000.00**

POSTED BY ORDER OF DIRECTOR, DIVISION OF FORESTS AND LANDS



By _____

Date _____

