

LINCOLN BOARD OF SELECTMEN
REGULAR MEETING MINUTES
MONDAY, JANUARY 28, 2013 – 5:30PM
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH

Board of Selectmen Present: Chairman O.J. Robinson, Patricia McTeague, and Tamra Ham.
Staff Present: Town Manager Butch Burbank, Administrative Assistant Brook Rose, Planning Board Chairman Pat Romprey, Finance Administrator Helen Jones, and Public Works Director William Willey.
Public Present: Attendance sheet attached.

I. CALL TO ORDER:

Chairman Robinson called the meeting to order at 5:32 P.M.

II. APPOINTMENTS

Will Abbott/ Society for the Protection of NH Forests Re: Northern Pass

Mr. Will Abbott from the Society for the Protection of NH Forests approached the Board to gain their support on a letter drafted to Tom Wagner, Forest Supervisor of the White Mountain National Forest. The purpose of the letter is to advocate for an extensive environmental review prior to Mr. Wagner, in his role as decision maker, granting a special use permit to the Northern Pass project. Mr. Abbott explained that the Society wants ensure that Mr. Wagner has all of the information needed throughout the federal review process to make an informed decision. Mr. Abbott stated that he has also approached the towns of Franconia, Easton and Woodstock with the same request. The Board thanked Mr. Abbott for bringing this to the Town of Lincoln. They will review the draft letter and decide on whether to sign the letter at their next meeting.

III. INFORMATIONAL MEETING RE: PEMIGEWASSET RIVER LEVEE

O.J. Robinson began the meeting by explaining the history of the levee. He explained that in 1960 the Town entered into an agreement with the Army Corp of Engineers (Army Corp.) to maintain the levee in perpetuity and to gain easement rights to do so. The levee functioned as it was designed to for 50 years until Hurricane Irene came along and wreaked havoc with the structure. The Town has since engaged the engineering firm Dubois & King to design a repair for the levee. He added that more questions than answers have been raised in this process and that with Town Meeting approaching the situation needs to be sorted out. O.J. Robinson introduced Town Attorney Peter Malia, Scott Michalak and Mike Bochand from the Army Corp., and engineer Bob Durfee from Dubois & King.

Attorney Peter Malia discussed the legal process surrounding the levee. He explained that the Town does not own the land in which the levee sits or even the surrounding land. He addressed the fact that it is a longstanding NH rule that municipalities cannot spend municipal funds on private property. He does not think that the Town would be violating that rule because the Board entered into an agreement in 1960 with the Army Corp. to maintain the levee. If the Town does not take any action, his understanding is that the Army Corp. could repair the levee and then charge or commence litigation against the Town. The Town is now exploring what needs to be done to restore the levee to active status with the Army Corp. If the Town spends the money to restore the levee to active status, the Army Corp., in the event of future damage to the levee, would pay to repair it. If the Town does even more work and restores the levee to FEMA's higher standards, the Town would be eligible for FEMA funds to repair the

levee and the property located behind the levee.

Scott Michalak from the Army Corp. then explained that under the prior agreement between the Town and the Army Corp., the Town was required to obtain easements to maintain the levee. The Town never secured those easements nor was the levee maintained to the level that the Army Corp required. In 2007 the federal government moved the levee to an inactive status. The Town did not seek to keep the levee in an active status with the Army Corp.

Mike Bochand stated that if the levee is returned to active status, the Army Corp. would repair any damages to the structure in the future. Mr. Michalak added that if the Town were to decide to repair the levee to FEMA standards, the Army Corp. would still have to approve the repairs. Mr. Bochand brought up the FEMA flood insurance and map program and pointed out how the Army Corp. program and the FEMA program are two separate programs that coincide with one another.

O.J. Robinson inquired as to what the requirements are to return the levee to active status. Mr. Michalak replied that the Town has to restore the levee back to its original design intent. If the Town were to raise the levee higher or modify it in any other way, the Army Corp. would have to approve of the modifications before anything else could be done. Any modifications would have to go through an extensive review process and be approved by the Army Corp. headquarters in Washington D.C. Patricia McTeague questioned whether the Town is guaranteed reactivation of the levee if it is restored to its original design. Mr. Michalak replied that yes it is guaranteed but only if there are no changes made to the original design.

Mr. Michalak also recommended that the Town adopt an Emergency Action Plan. In addition, if the Town decides to seek FEMA accreditation, a hydrological assessment would have to be done. Attorney Malia stated that the Town received a letter in 2012 which seemed to place additional requirements to bring the levee back to active status; however he has spoken with the Army Corp. and has since ironed out all but one requirement. Mr. Bochand explained that as part of the cost sharing of this project, the Town will be required to maintain the right-of-way and easement so that the levee can be maintained to the Army Corp.'s standards. Any encroachments within that system would need to be approved by the Army Corp. Some of the condos that were built in this area were never approved by the Army Corp. The condos (encroachments) will need to go through a review to make sure they do not endanger the structure of the levee. This requirement goes back to the original agreement. Bob Durfee stated that there are permanent impacts from the three condo units constructed into the embankment. However, an analysis can be done without a large expense and will show that those encroachments do not impact the integrity and safety of the levee.

Bob Durfee then explained that the Town has engaged Dubois & King to design repairs and rehabilitations to the levee with the goal of bringing it back to 1960 conditions so it can be reactivated by the Army Corp. The design plans are about 95% complete. The firm is currently working on the technical specifications and bid documents. The firm has drafted easements for the Town to secure the from six property owners. He read the owners names aloud. These easements will allow the Town to do the necessary repairs as well as to conduct routine maintenance in the future. The total estimated repair project cost is \$990,000. The firm's next step is to submit the final engineering plans to the Town for review and comment. Once that is complete, the plans will then be submitted to the Army Corp. for approval. Once all approvals are in place, the project can be put out to bid. Dubois & King will obtain the permits for the construction, primarily the NHDES Dredge and Fill Permit. This will take about four weeks to complete and 2-3 months to be approved by NHDES. Mr. Michalak added that this may be considered a federally exempt project and thus be exempt from the permitting if the design is

within the original lines of the project.

Town Manager Burbank summarized the presentation by saying that the Town's major decision is what course of action to take. The Town needs to decide whether to do anything at all, whether to bring the levee back up to its original 1960's standard and thus be reactivated by the Army Corp. or whether to spend the money to bring the levee up to FEMA's standards. This is a major decision. He added that bringing the levee up to 1960 standards may or may not help the homeowners with their flood insurance issues. However if there were any future damages to the levee, the Army Corp. would cover 100% of the repair costs. He added that the Army Corp. construction standards have no bearing on the 100 year flood plain determined by FEMA. FEMA is currently rewriting their flood maps and if FEMA determines these homeowners are in a flood plain, it could affect their flood insurance. FEMA may/may not recognize for insurance purpose that there is a levee there.

At this time the Board opened up the meeting for public comment.

Chester Kahn stated that 3 years ago FEMA mapped the river (flood maps) and the results of the mapping were supposed to be released last November. These new flood maps have yet to be released. He added that it would be ridiculous to incorporate the 1980 flood mapping into the levee design as the river has changed its course and the height differential is now different. The proposed mapping is 12-18 inches higher than it was in 1980. He stated that the flow rate determined in 1960 was exceeded during Hurricane Irene and that if the levee were built according to those former standards; it would not offer any protection to the homeowners. Mr. Michalak replied that the difference now would be that the Army Corp. would bear all of the costs of any future incidents involving the levee. Mr. Kahn also informed the Board that the homeowners were sent a letter from FEMA stating that if they had purchased flood insurance prior to the release of the new maps that they are grandfathered and can remain under the grandfathered rates for as long as they own the property.

Mr. Kip Griffin, homeowner on Bunker Lane questioned whether the wall would have held up during Hurricane Irene if the Town had maintained the levee properly. Mr. Michalak replied that it probably would have but he can only speculate. Mr. Griffin questioned whether the Army Corp. would consider the homeowners to be safe if the levee were rebuilt to 1960's standards. Mr. Michalak replied that the levee was not designed to protect residences but was built for the paper mill. He is not sure whether or not it would protect the residences. He added that all levees inevitably fail at some point. Mr. Bochand added that when the Army Corp. designed the levee, it was designed to a flow rate not a flood event. The elevation can change as things happen to and develop within a watershed. The 100 year flood level can go up.

Dave Beaudin questioned whether there is a life expectancy to the levee. Mr. Michalak replied that there is an economic life expectancy and that the intent is, as long as the levee is maintained, that there is no set end date. He added that he cannot give a life expectancy to the materials because they are all natural materials, not man made.

Cathy Hult, homeowner on Bunker Lane, questioned what the project timeframe and process would be. O.J. Robinson replied that the Board's plan is to make a presentation at Town Meeting. It will either be for just the engineering portion of the project or for a warrant article to include engineering and construction. He added that the Board anticipates this project being bonded which will require a hearing and a 2/3 majority vote by secret ballot with the polls remaining open for one hour at Town Meeting.

Marcia Imbrescia, homeowner on Bunker Lane, questioned whether if the Town decides to go the route

of FEMA accreditation, what type of visual impact there would be. Would the homeowners on the ground level be looking at a wall? Mr. Burbank replied that most likely they would be looking at some sort of a retaining wall.

Alan Malkasian, homeowner on Bunker Lane, questioned whether if the Town decides to seek reactivation by the Army Corp. would the Army Corp. take into consideration the changes in the river to determine if a redesign of the levee was warranted. Mr. Michalak replied that typically a redesign would not be done unless there were future damages to the levee. If there were damages, the Army Corp. requires that the repairs to the levee be done within one season. Mr. Malkasian replied that the river has changed considerably in the last five years. Mr. Bochand stated that if the homeowners wanted a redesign they would have to approach the Town and the Town would have to petition their congressional delegation. Mr. Malkasian questioned how much it would cost to bring the levee up to FEMA standards. Bob Durfee replied that in order to raise the levee it would cost somewhere in the ballpark of \$190,000 per verticle foot.

Mr. Michalak made a point that FEMA certification is an actuarial standard for insurance purposes whereas the Army Corp.'s concern lies with preserving life and public safety.

Marion Malkasian questioned what impact the construction would have on the homeowners. Bob Durfee replied that in order to stabilize the granite blocks the blocks would first have to be removed and then fill would be brought in and the blocks would then be reinstalled. This process would require a lot of heavy equipment. At the bottom of the levee at the river's edge, a diversion structure (gravel berm) will be constructed and substantial tree clearing will take place. The easements provide for a 12 foot wide lane through the abutting properties between the condos and the river. The construction process will take approximately six months.

Mr. Russ Cooley questioned whether there is a letter of notification addressed to the Town from the Army Corp. relaying that the levee had been deactivated. Mr. Michalak confirmed that there was a letter of notification and it is dated May 7, 2007. Mr. Cooley questioned why the Army Corp. granted him a permit for the development of the Rapids project (construction of condos) if the levee had been deactivated at the time. Mr. Michalak replied that wetlands, dredging, and fill permits are issued by an entirely separate division within the Army Corp., the regulatory division. That division uses their regulatory requirements to evaluate permit applications. The division he works within strictly oversees levees. Mr. Cooley stated that he still does not understand why if the Army Corp. knew about the levee, was he was still granted a permit. Mr. Michalak replied that he couldn't really speak to the matter as he does not know the background of this particular project. Mr. Cooley stated that a permit should never have been issued to him as he has since spent hundreds of thousands of dollars in development costs. He questioned why the Town never advised him of the decertification of the levee and why he was issued conditional approvals on the site given the decertification. He also questioned when the new flood maps were going to be released.

Attorney Malia stated that he placed a call to FEMA last week and was informed that Congress advised FEMA that they are not in agreement with FEMA deactivating levees and thus placed a hold on the process. FEMA had been in the process of deactivating the levee in Lincoln. Congress is in the process of approving the related new legislation called LAMP. O.J. Robinson added that the Town does not have a timeframe for when the new flood maps will be complete for Lincoln. The new maps are out for other areas within the county but FEMA was not sure how to incorporate the levee into the maps so the maps for Lincoln were put on hold by Congress until the maps can go through the LAMP process. However the LAMP program is still on hold at this point.

Town Manager Burbank reiterated that lives and safety are what are most important. This is what the Town and the Army Corp. are most concerned with.

Mr. Cooley questioned what will happen when he comes in for site plan approval. O.J. Robinson stated that the Planning Board would address his application.

Kip Griffin stated that he is unsure as to why the Town decided not to maintain the active status of the levee. He feels that it is the Town's responsibility to rebuild the levee and reactivate the status with the Army Corp. O.J. Robinson replied that the ultimate decision will lie with the voting residents that show up at Town Meeting. There needs to be a 2/3 majority vote to get this passed. Marcia Imbrescia stated that she is a second homeowner of many years as well as property owner and a business owner in Town. She is frustrated because she cannot vote or even speak at Town Meeting as she's not a legal resident. O.J. Robinson stated that the Board welcomes nonresidents to speak at Town Meeting and he would hope that the townspeople would be aware of the fact that there are major taxpayers such as Mrs. Imbrescia that are part of this community and have a right to speak at Town Meeting.

Pat Romprey questioned what approach the Board would take concerning this project at Town Meeting. Tamra Ham replied that the Board has ten days to make a decision in order to have enough time to bring their decision before the Budget Committee. Mr. Romprey then questioned the Army Corp. as to if the Town rebuilt the levee to the Army Corp.'s specifications, could the Town then come at a later date with an engineering plan to upgrade the levee? Mr. Michalak replied that the Town can submit an engineering modification at any time however it would have to undergo an extensive review process. Pat Romprey questioned whether it was possible to make this project a two-step process. Mr. Michalak replied that yes it is possible.

Sharon O'Brien, homeowner at the Links questioned what provisions would be made to protect the private road (Bunker Lane) throughout the construction process. Russ Cooley further questioned whether the Town would take over the road. Patricia McTeague replied that the Town would need to get easements from the landowners but that does not mean the Town will take over the road. That decision would have to go before the voters at Town Meeting.

The Board informed the audience that Town Meeting is March 12th, the Budget Hearing will take place on February 7th and the Bond Hearing will be on February 14th. The audience was in agreement that they would rather not see the Board put off the construction of the levee for another year. The informational meeting concluded at 7:25pm.

The Board and Bob Durfee discussed the performance bonds and project insurance requirements. Mr. Durfee agreed to be present at Town Meeting to assist with the discussion regarding the levee. The Board decided not to move forward with the hydrological study.

After some discussion, the Board agreed to move forward with the option to reconstruct the levee according to the 1960 design in order to reactivate and thus turn the levee back over to the Army Corp. The Board then discussed the necessary warrant articles and decided to bond an even one million dollars this year.

IV. MINUTES OF THE PREVIOUS MEETING:

Motion: "To approve the meeting minutes of January 22, 2013."

Motion: Tamra Ham Second: Patricia McTeague. Motion carried unanimously.

V. OLD/NEW BUSINESS

Town Manager's Report

Gaming Article

Town Manager Burbank informed the Board that he spoke with the Secretary of State's office regarding Mr. Gionet's proposed gaming bill. They informed him that the bill itself states whether it is to be voted on as warrant article or as a ballot item. Mr. Burbank reviewed the bill and it states that it has to be voted on as a warrant article not a ballot item.

Legal Budget

The Board briefly discussed the legal budget. They would like to increase it to \$50,000 and will bring the proposed increase to the Budget Committee.

Fire Station

Town Manager Burbank informed the Board that the Fire Station structure evaluation has been completed. It is not good news. It is clear that the station was built over the cellar hole of the old Lincoln Inn. The engineer drilled down 18 inches into the concrete and then the drill just dropped into empty space. The Public Works Department has since filled the empty space with several yards of sand but the building has to be stabilized so that it does not continue to deteriorate. Mr. Burbank should be receiving a quote on the repairs shortly so the expense can be written into a warrant article. This project has moved to the top of the Town's maintenance list. Mr. Burbank will know more this week.

VI. NON-PUBLIC SESSION

MOTION: "To enter into non-public session pursuant to RSA 91-A:3II(c) personnel."

Motion: Tamra Ham Second: Patricia McTeague

**Roll Call Vote: Tamra Ham in favor
Patricia McTeague in favor
O.J. Robinson in favor.**

The Board entered non-public session at 8:20pm. Town Manager Burbank and Brook Rose were also present.

MOTION: "To seal the non-public session meeting minutes until the grievance dated December 26, 2012 has been complete as publicly disclosing the minutes would affect adversely the reputation of any person other than a member of the Board."

Motion: Patricia McTeague Second: Tamra Ham

**Roll Call Vote: Tamra Ham in favor
Patricia McTeague in favor
O.J. Robinson in favor.**

MOTION: “To come out of Non-Public Session.”**Motion: Tamra Ham Second: Patricia McTeague****Roll Call Vote: Tamra Ham in favor
Patricia McTeague in favor
O.J. Robinson in favor.**

The Board came out of non-public session at 9:00pm. The Board discussed personnel issues related to the Police Department. No final decisions were made.

VII. ADJOURNMENT

After reviewing the weekly payables and with no further business to attend to, the Board made the following motion.

MOTION: “To adjourn.”**Motion: Tamra Ham Second: Patricia McTeague All in favor.**

The meeting adjourned at 9:05pm.

Respectfully Submitted,

Brook Rose

Approval Date ____/____/____

Chairman O.J. Robinson

Vice Chair Patricia McTeague

Selectman Tamra Ham