

LINCOLN BOARD OF SELECTMEN
MEETING MINUTES
FEBRUARY 3, 2015
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN, NH

Board of Selectmen Present: O.J. Robinson, Patricia McTeague, and Tamra Ham.

Staff Present: Town Manager Burbank, Administrative Assistant Jane Leslie and Finance Administrator Helen Jones.

Budget Committee Present: Mike Simon, Ivan Saitow, Herb Gardner, Susan Chenard, LutzWallem, Beverly Hall, Marty Nastasia and Clark Wrye II

Public Present: Paul Beaudin, Edmond Gionet, Ron Beard, Daren Wipperman, Jayne Ludwig, Richard Sakakeeny, Marcie Wrye, Rick Kelley, Sharon O'Brien, David O'Rourke, David Beaudin, Scott McIntyre, Mary Conn and Jay LeBlanc

I. CALL TO ORDER

O.J. Robinson called the Bond Hearing in the matter of the East Branch Pemigewasset Levee to order at 5:30pm.

II. BOND HEARING

Public Hearing re: To see if the Town will vote to raise and appropriate the sum of One Million Six Hundred Thousand (\$1,600,000.00) to rebuild the East Branch Pemigewasset River Granite Block Levee originally constructed in 1960, and to authorize the issuance of not more than One Million Six Hundred Thousand; (\$1,600,000.00) of bonds or notes in accordance with the provisions of the Municipal Finance Act (RSA 33), and to authorize the municipal officials to issue and negotiate such bonds or notes and to determine the rate of interest thereon.

Chairman Robinson opened the meeting with a brief description of the proposed Warrant Article for the March 10th Town meeting, and to discuss the Town's intent as well as providing an opportunity for the public to ask any questions as well as voice their opinions, concerns or general comments. Chairman Robinson provided a brief history on this issue that was voted on at the previous year's Town Meeting in 2013, where the Town was seeking to appropriate the sum of One Million Two Hundred Thousand (\$1,200,000) to rebuild the East Branch Pemigewasset Levee, at which time, it did not receive the 2/3 majority vote needed to pass.

Chairman Robinson summarized the levee history: *"The levee was built in 1960 and was funded and overseen by the U.S. Army Corps of Engineers (USACE), and its purpose at that time was to divert water for paper making processes to the mill. Since the demise of the paper mill, the levee continues to serve a purpose to the Town of Lincoln as far as taxable real estate is concerned. There is approximately 22 million dollars' worth of taxable real estate that is within what is called a "floodway", which would adversely affect these properties in the event of a catastrophic flooding incidence, if in fact the levee was not there. In 1960 the Town signed an agreement with the USACE that we would in perpetuity maintain the levee. This agreement did not spell out clearly who would be responsible for what during a particular circumstance. In 2006 there was a significant storm that caused extensive damage to the levee, and the USACE sent several letters to the Town stating they needed to repair the damages, and the Town refused to do anything due to the extensive cost of repairs. As a result, the USACE deemed the levee "inactive". After Hurricane Irene, additional substantial damage was incurred, however the levee*

*was able to do its job and protect lives and property. Concerning the issue of “ownership”, it is very clear that the Town does **not** own the land underneath the levee. Each of the individual landowners along the riverfront own what is called a “thread of the river”, however, the question **who actually owns the structure that sits on top of the land** continues to remain unclear. It is very clear however, that the Town is responsible for maintaining the levee according to the 1960 USACE Maintenance Agreement. Per the 1960 agreement the Town was supposed to gain legal access to that structure through easements or deed, and neither of these was done. The only way the Town can get released from the 1960 Maintenance Agreement would be by petitioning the U.S. Congress and let them decide, however based on what we have been told, this would be highly unlikely to happen. We are asking the Town to again vote on appropriating the money to repair the levee, and protect the 22 million dollars’ worth of taxable real estate which is currently at risk. At this time, DES (Department of Environmental Services) currently has jurisdiction over this project, and the Town is currently awaiting a written response from DES in reference to an inspection that took place in June 2014. We are therefore asking the Budget Committee to approve this article for the Town Warrant, so that it can go up to vote at Town Meeting. Our expectation is that someone makes the motion at Town Meeting to reschedule taking action on this specific article until a specific date, so that the Town can retrieve additional information from DES, additional engineering agreement, and USACE approval. The figure 1.6 million is not an exact figure, however, a hard estimate based on last years proposed 1.28 million, and represents additional costs the town may incur. Whatever amount the budget committee approves, would allow this article to go to Town Meeting with a hard number and amended at a later date once we receive a firm estimate. It is important we separate the two issues, ” rebuilding the levee”, and “paying to rebuild the levee”. There are certain disputes over who should be paying for the levee; the Town; the homeowners who live on the levee; and those who say we do not own it, therefore, should not pay for it. There is language in the former deed of the Paper Mill that states the mill is responsible for maintenance of the levee, however, the mill sold their land to individual developers and homeowners and much of that language got lost, thus causing disputes over who should be paying for the levee.”*

At this time, Chairman Robinson turned to the Budget Committee members to ask if they had any questions or comments concerning the levee. Budget committee member Herb Gardner thanked Chairman Robinson for recounting the history of the levee so thoroughly. Budget Committee Chairman, Mike Simons also stated that the Budget Committee has spent many hours discussing the levee at previous budget committee meetings and thanked OJ for wrapping it all together and presenting it to the Town.

Chairman Robinson opened the meeting up to the Public at 5:46 pm

Jayne Ludwig questioned Chairman Robinson if he was asking taxpayers for money in anticipation that we will definitely have the responsibility of paying for this, or was he guided by attorneys to request this money? Did an attorney look at the original contract of 1960 and say the Town should go this way?

OJ: *“We are anticipating we will be doing this project, but we don’t know. Tax-wise, the 1.6 million bond that gets approved sits there at approval and will not affect the tax rate until we start spending the money, and begin the repayment of the money. Attorneys have reviewed, and the contract states that the Town is responsible for the repairs of the levee. The fine line is over whether it is a catastrophic event and the ACE recommends that we fix it and what is not, as well as the levee being “active” or “inactive”.*

Rick Kelley: How can we repair the levee if we do not have any easements? Also, if the homeowners own the land, and that land was owned by Franconia Paper and sold to CMB and then sold off as parcels, wouldn’t that responsibility to repair the levee go along with the deed?

OJ: *One of the requirements to doing this project is that we gain access to the easement process. Attorneys have drafted the easements, and they must now be signed by the landowners. The way that I understand the deed transfer process is that if you have an encumbrance on your property, regardless of what it is, when you deed that property the encumbrance goes with it. That has not happened. That's one of several legal aspects our attorneys are looking at.*

Edmond Gionet addressed Chairman Robinson, and summarized his recollection of his time served as a Selectman shortly after that agreement was signed, stating the only responsibility/liability the Town had was to keep the vegetation cut and crevices and cracks filled to prevent erosion. To the best of Mr. Gionet's knowledge, the Town had fulfilled its obligations and was in good standing with the USACE, and to say that the Town owns the land and is responsible for repairs to the levee is absurd. Mr. Gionet feels if the USACE states that the Town of Lincoln is liable for these repairs, then they should come forward and provide evidence of this as he strongly disagrees. Chairman Robinson clarified for the record that the USACE is not pressing the Town to make these repairs; the levee will remain in an "inactive" status and actually DES (the State), is saying that this is a *life safety hazard* and must be repaired.

Paul Beaudin requested clarification concerning a comment that was made that the dam was in "*imminent failure*" and a threat to property owners, yet according to a Courier Newspaper article, Steve Doyon, from the State Safety Inspection Program stated "*The Pemigewasset River that protects approximately \$24 million dollars' worth of property is not in a state of imminent failure*". Mr. Beaudin feels the Town should go to court in a timely manner, acquire information and facts, and have a collaborative discussion with the homeowners, USACE and the Town, each representing their case, and determining a mutually agreeable path to follow. To raise 1.6 million dollars now will not be beneficial to the town at this time, with so many questions pending (i.e. ownership, rights-of-way) and he cannot understand why the Board would want to move forward at this point, and would be better served by appropriating several hundred thousand dollars into a CIP Fund (Capital Improvement Program) showing an intent to do some work, hence lowering bond costs.

Richard Sakakeeny, homeowner at 46 Bunker Lane, a property that abuts the river and a portion of the levee thanked Chairman Robinson for his detailed summary of the levee's history. Mr. Sakakeeny feels with the bond's approval this could be a win-win situation for all and raised several key points such as damage prevention to flood zones and major damages to property, reduction of tax revenue, and significant expenses to the town if the town infrastructure is damaged in any way. Additional damages to vacation, residential and business property would result in a reduction in tourism having a significant negative impact on the local business economy. Mr. Sakakeeny feels if this matter goes to the courts, it will cost hundreds of thousands of dollars to both parties, and possibly dozens of lawsuits against the town. Additionally, Mr. Sakakeeny reminded the audience that a significant portion of the tax revenue is generated by non-residents, and in reality, it will be the non-residents tax dollars paying the greatest portion of this expense, alleviating the full-time residents' burden.

E-mail Correspondence

Selectman Ham read the following e-mails pertaining to the levee into the meeting minutes:

Dear Town of Lincoln Officials,

Because we are unable to attend tonight's meeting, we are writing to let you know of our support that the town issue a bond to repair the East Branch Pemigewasset River Granite Block levee. We support this for several reasons.

1) As property owners: We own 66-2 Bunker Lane, a condominium in the Fairways Association. Our condo is on

the river, in the area of disrepair. When we purchased this property, we completely remodeled the unit, with all new plumbing fixtures and a new kitchen among other improvements.

At the time of sale, we were never informed of the responsibility of maintaining the river levee. We were not told of the history between the Army Corp of Engineers and the Town of Lincoln.

2) As business owners: We own the Village Shops and the office building at 49 Main Street. The well-being and future of the Town of Lincoln is of utmost importance to us. We are concerned that if the Town does not issue the bond and do the repair that is not only their responsibility but also in their best interest, then the controversy and resulting lawsuits will create a much larger and more damaging situation.

3) As an investor and developer in the new phase of Forest Ridge: we have made a commitment that will bring in new taxpayers to Lincoln. Town growth hinges on the trust investors have the community and its governance, and that includes protecting infrastructure and services.

Clearly, we are fully in support of the Town of Lincoln raising and appropriating funds via the issuance of a bond in the amount of \$1,600,000.00 to rebuild the levee.

Respectfully,

***Marcia & John Imbrescia
PO Box 127
Lincoln, NH 03251***

Hello to all and thanks for reading my comments. As a taxpayer on Bunker lane and other properties in town, I would like to take a moment to comment on the bonding of the project known as the granite block Levy on the east branch of the Pemi. I view this project as one of a basic fiduciary duty to the town of Lincoln. There are many properties downstream that would suffer greatly should further deterioration of the levy occur. The town and its taxpayers have a moral obligation to ensure the safety of its residents this includes rebuilding the levy in question. I compare this problem to many others which may or may not seem similar. If a storm washed out your road or destroyed the school in town, would you not expect it to be repaired? The question of ownership is a valid one. Rebuilding the levy should not be put off any longer. With each high water event the levy is weakened and undermined further. If this levy totally fails, many properties will be destroyed not the least of which could be our sewerage treatment plant and transfer station. The tax impacts associated with this project are minimal now compared to what they could be in the future. Please do the right thing

***Randy Farwell
New Earth Inc
N.L.I Entertainment
Zipline Adventure Tours***

Dear Town of Lincoln NH,

***We made a personal and substantial investment into the Lincoln NH community. We have loved and visited the area for over 30 years. We finally were able to afford a retirement home in Lincoln, and were extremely excited. Unfortunately, we feel that the Town of Lincoln NH is not fulfilling its obligation of fixing and maintaining the levee that helps keep us safe and protect our property. It is not in any ones best interest for the levee to fail. We fail to see any upside to that.
Thank you for your consideration,***

***Daniel & Mary Beth White
20 Bunker Lane, Lincoln NH***

***Robert S. Weinstein
30 Bunker Lane
617-571-6595***

Dear Town of Lincoln:

I would like to strongly support the proposed appropriation for repair of the Pemi levee.

We have owned the house at 30 Bunker Lane since 2001.

I have been involved in the evaluation of the current state of the levee and was present for the "walk through" with the NH Department of Environmental Services. The documentation is clear. The Town has long neglected its responsibility to maintain the levee which it assumed from the Army Corp of Engineers.

I urge the Town to accept its legal and financial responsibility and move ahead with the repair of the levee without further delay or involvement of the courts.

***Sincerely your,
Robert S. Weinstein***

Public Hearing Discussion Continues:

Edmond Gionet referenced a statement Chairman Robinson made concerning the levee being constructed to divert water to the mill pond, and stated this in fact is *not* true. Mr. Gionet explained a rolling dam was built to divert the water to the mill pond. Chairman Robinson added, "Across the levee structure there is a *Flanking Dike*, termed by DES, where the water is let in behind the levee in towards the Mill Pond, and DES is stating this is all one structure." As a result, the list of abutters is now 211, including the Lodge at Lincoln Station whose land comes down over the steep embankment behind Gordy's Restaurant, and in the eyes of DES, touches the land that the Flanking Dike is on. DES views the Flanking Dike a/k/a levee and diversion dike all one-in-the- same, and considered a "dam," thus falling under the DES jurisdiction.

Chairman Robinson informed Mr. Sakakeeny that the Town has been sued by a landowner and currently involved in litigation resulting from damages caused by the levee. Mr. Sakakeeny felt it plausible as a tax payer to avoid further costly litigations and expenses to all parties.

Paul Beaudin expressed frustration about the letters that have come in stating the town was not doing the just and responsible thing. He states the Town has documents asserting they did the maintenance until 1989 and feels the USACE did not do the appropriate thing. Mr. Beaudin feels there have been other flooding incidences occurring this past year that impacted several homeowners and the town walked away, however, now asking for \$1.6 million dollars to repair the levee. Mr. Beaudin also expressed concern if we repair the levee and have another high-flow storm that damages the levee in the future, will we be responsible for another \$1.6 million dollars in repairs? Mr. Beaudin feels this should be a cooperative venture with the homeowners being financially accountable, the USACE, as well as the Town of Lincoln.

Richard Sakakeeny stated he was under the impression from the January 28th 2013 meeting with the USACE, that if the town brought the levee back up to its 1960 USACE Standards, the Army Corp. would take over responsibility for it. Chairman Robinson explained that if we rebuilt the levee to the ACE Standards and they approved it, the levee would be put back on "Active" status which would mean the Town is still responsible for the maintenance and the ongoing process, and in the event of a catastrophic occurrence, such as Hurricane Irene, the ACE would come in and fix it. Chairman Robinson reiterated that there remains a vast *grey area*. The 1960 agreement which is the basis for this entire thing clearly defines what the town needs to do; however, it does not clearly define where the Army Corp steps in.

Jayne Ludwig questioned if the homeowners have, or are able to obtain flood insurance, or is the town responsible for "acts of nature" and to repair these homes that the homeowner chose to purchase on or

near rivers and mountainsides. Mr. Sakakeeny responded by explaining most homeowners do have flood insurance, however, federally backed loans operate under different guidelines.

Chairman Robinson discussed one of the scenarios our Town attorney’s discussed was suing the Army Corp for their lack of properly repairing the levee; however that would be a long extensive litigation and up in the air at this point.

David Beaudin stated that he had attended last week’s Budget Committee meeting, and the committee appeared to be at odds over this proposal, and unable to come up with a vote due to the many unanswered questions. Mr. Beaudin questioned why the town would pursue this any further if the Budget Committee was unable to make this decision. Also, Mr. Beaudin questioned if the Board has pursued the homeowners to arrange an agreement to share in the maintenance costs, and to detail the rights and responsibilities of all involved parties. Chairman Robinson responded by first stating he was unable to attend the Budget Committee meeting the previous week due to his conflicting work schedule, however, what the Budget Committee choses to do will be completely up to them. As for voluntarily bringing the landowners in, we have not had that discussion as we are first waiting for the DES letter so when we do sit down for discussions, we know what DES is going to require.

Paul Beaudin asked Chairman Robinson if he personally felt it was okay that the town pays for the extra 400 feet of improvement to the levee. Chairman Robinson responded that he feels that DES will mandate it, and as previously stated, he feels the building of the levee and who pays for it are two separated issues, and feels we need to do this and take care of it once and for all.

IV. ADJOURNMENT

MOTION: “To adjourn Bond Hearing.”

Motion: O.J. Robinson Second: Tamra Ham All in favor.

The meeting adjourned at 6:26pm.

Respectfully Submitted,

Jane Leslie

Approval Date ____/____/____

Chairman O.J. Robinson

Tamra Ham

Patricia McTeague