

MINUTES
SELECT BOARD
TOWN OF PETERBOROUGH
Tuesday, October 17, 2017 – 5:00pm
1 Grove Street, Peterborough, New Hampshire

Present: Barbara Miller, Tyler Ward

Also Present: Rodney Bartlett, Nicole MacStay, Vanessa Amsbury-Bonilla

Chair Ward called the meeting to order at 5:00pm.

Petition for Order to Repair/rebuild the Bell Mill Dam per RSA 482:24-26

John Cronin, the attorney representing Brenda Barry pointed out the terms of the RSA, saying when in sharing a dam, which needs to be rebuilt or repaired, it states that the parties concerned may apply to the Selectmen for an order to repair, and that petitions shall include the owners, as well as the scope of the project. He claimed that all statutory requirements have been met. He had information, but not confirmation that Margaret Porter owned the other half. Contoocook Hydro LLC has an exemption to a license to generate hydro power at that facility and were instructed to fix the dam per the other owner, Ms. Brenda Barry. Ms. Barry spoke to her desire to have the dam repaired.

Mr. Cronin spoke to the history of the structure, and that the ownership interest is a tenancy in common interest. Tenancy in common been defined since 1890, a join estate in which there is unity of possession but separate but distinct titles. He argued that one cannot have half a dam, a structure that only has validity as a whole. By leaving the dam alone and allowing it to deteriorate, one is ignoring the property consequence to the property owner; you cannot commit waste to the damage of another person's property.

Historically this dam provided energy for a saw and grist mill, Peterborough cotton manufacturing facility, bell factory, and the Baily Basket factory, the factories located on the site where Brenda Barry's house is now located. In 1922 the factory burned down, sold the land to Mary Scofield and reconfigured the land, owning half the dam. He presented DES confirmation of the joint ownership of the dam. In the 1960's current owners of the dam at that time, worked collaboratively to repair the dam when it almost washed out.

He provided orders from the Federal Energy Regulatory Commission from several years, along with NH DES reports, establishing that repairs are needed. Contoocook Hydro LLC has exemption that was transferred, is holding interest in the project, as well as a lease allowing Contoocook Hydro to invest in this project. Mr. Bartlett explained that FERC has the regulatory authority of the dam, with the DES role as a consultant, on dam safety related issues. They accompany the FERC inspectors and provide FERC and licensee with comments and advice but FERC has the ultimate authority. He continued that if this were a state regulated site, getting an idea of the hazards of the dam if it were to fail would be required. The FERC letter refers to the dam as a low hazard dam. FERC only has low, significant or high hazard classifications, not the 'non-menace' dam classification of the state. After receiving the letter from FERC, repair was started, but was halted by the co-owner, Margaret Porter. FERC's authority extends to the licensed exempted entity, not the private owners. Steve Doyan from DES who was present at the hearing confirmed Mr. Bartlett's summary of the regulatory situation at the Bell Dam.

The conversation was turned over to attorney Justin Richardson with Upton & Hatfield, representing the Porters. He explained there is unanimity of possession, and not a tenancy in common. He explained that tenancy in common differs in ownership. Deeds refer to a divided interest in the dam. The statute that precedes RSA482:24 is not a joint tenancy, or tenancy in common, but severalty, an important distinction. He explained the transference of property of Mary Scofield to her siblings, but holding to themselves half the dam, including the water rights. He referred to a Supreme Court case in 1853 which does not allow the taking of private property, and that Ms. Porter holds the water rights. He explained the change of the shape of the river after the dam, yet the ownership still goes to the middle of the river. He referenced the cooperation in the 1960's between Mr. Blodgett and Mr. King, the owners of the properties at that time.

The petition required there to be a joint interest; the agreement provided for a twenty-five-year term, which discontinued in 1980. He claimed Barry and Porter both own the water rights but the agreement expired that allowed the two sides to work together. The Petition isn't allowed because it's not joint ownership. Also, legal notice wasn't given. Statues derived were impacted by changes in jurisdiction, saying no part of a person's property shall be taken for the purpose of private development. Taking water rights away without permission from the co-owner of the dam, taking away property rights with no compensation, is not legal. Ms. Miller asked if the hydro company was paying for all the repairs. Mr. Cronin said that they are and would provide yearly compensation to the owners. Ms. Porter, spoke to her emotions about the property and about her property being unfairly taken.

After hearing Ms. Porter's letter, Mr. Silas Little stepped in to say that like a party wall, there are obligations to each other. When the dam was divided in half there were easements that allowed the benefit of the dam. They are implied reciprocal easements for both owners which recognized the water rights of both owners. According to the statute historically, a part owner of the dam could force the others to repair the other part of the dam. No one is taking anything.

Ms. Barry briefly spoke to her obligation and reasoning behind this project and apologized for the problem that has resulted. Mr. Cronin referenced RSA 482:23, allocation of the expense of the repair, and existing order from FERC regarding the need for repair.

Mr. Ward spoke to the fact that they would not make a decision tonight. Mr. Bartlett stated that a site visit required, and consultation with DES and FERC.

Mr. Sterling, chair of the EDA, spoke to the encouragement of Contoocook Hydro LLC, and that the U.S. has 70,000 dams, but only 2,000 are producing electricity, a low impact, sustainable form of energy production. Peterborough could stand as an example for New Hampshire, as we have nine to eleven possible hydro dams in our town.

Ms. MacStay recommended that after receiving all the legal information, to schedule a follow up hearing, and an opportunity to consult with town council. The Select Board agreed and instructed staff to set dates for a site visit, consultation with DES and FERC and the next public hearing and requested a statement from the attorneys within ten days' time.

2018 Property Revaluation

Marybeth Walker, with Corcoran Associates presented the revaluation of property assessments for 2018. Every municipality is required to perform a complete revaluation at least once every 5 years, comparing current market value with assessed values, exemptions and credits and the current use program and accuracy of field data. The purpose is to try to achieve equity by bringing assessments

to market value. Properties are affected by class, location, desirability market supply and demand. This revaluation will review all sales, build, test and refine valuation models, value all properties using newly established models, review preliminary values for quality, reasonableness and equity, send letter to disclose the preliminary values, conduct informal taxpayer reviews to answer questions, research and verify questions from meetings and finalize 2018 assessed values. They will use cost approach and sales comparison approach, will do a mass appraisal, appraising all property as if it sold on the same date. The date of appraisal will be April 1, 2018 for all properties.

Peterborough Town House and Historical Building Centennial Celebration

The Select Board passed over this portion due to time constraints.

Miller State Park

Francie Von Mertens spoke to the proposed power lines in Miller State Park. She stated that she was in agreement that the lines need an upgrade for safety reasons. NH Public Utilities is in charge of utility safety. She attended a public information session last Thursday but said there have been no public forums, nothing has been handed out, only posting at park. The Nature Conservancy, who is an abutter, knew nothing about the project. The powerlines through the woods for lower half of 1.3 mile access road are to remain but need to upgrade the current patchwork of conduits, cables draped on trees and rickety poles on the top half. The project includes replacing the current patchwork with an eighteen-pole powerline along the road, crossing the road eight times.

The stakeholders are powerline end-users, utilities, and state agencies, not abutters, Temple or Peterborough residents.

She requested the town to consider the impact to a very scenic roadway in town as a town heritage being the state's first state park, which contributes to tourist experiences. The project timeline could be starting the cutting of trees in November.

Mr. Ward asked if making this a scenic road would help with this. Mr. Bartlett said it's a class II road but is not certain how that would affect this. Mr. Bartlett said he would continue to reach out to PUC and will contact Eversource. At this time no pricing, no contractor, or materials have been ordered, so late winter or spring would be the soonest this project would begin.

David Baum, spoke to his experience with the mountain and the therapeutic nature of the area, as well as the lack of process in this situation, without consideration for the impact that would result. Katrina Lewers also spoke to the therapeutic aspect of the road. Chris Mann echoed what the others said as well.

Ms. Miller asked if this would bring faster broadband service to Peterborough. Ms. MacStay said not necessarily. Francie argued for consideration to request a conduit to be run up the mountain and asked for a letter from the Board to the PUC regarding this request.

Selection of Real Estate

Two responses from the town's request for Proposal for Real Estate Agent to represent the Town were received, the Petersons and the Bean Group. The proposed commission for the Petersons would be 6%, the Bean Group 5% if they're carrying the real estate, 6% if another agency. We would offer a one-year contract, with option to renew for a second year. Ms. MacStay explained the consequence of not having an existing contract with an agent in place already. Mr. Ward supported using a different agent and there is a financial benefit of going with the Bean Group.

Motion: Ms. Miller made a motion to accept the Bean Group for a one year contract to sell real estate for the town.

Vote: Mr. Ward seconded. All in favor; motion carried.

Review and approval of Select Board Minutes from September 19, 2017

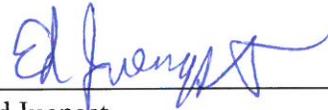
Motion: Mr. Ward made a motion to approve the minutes from September 19, 2017.

Vote: Ms. Miller seconded. All in favor. Motion carried.

As there was no more business to discuss, the meeting adjourned at 8:00 pm.

Respectfully Submitted,
Vanessa Amsbury-Bonilla, Department Assistant

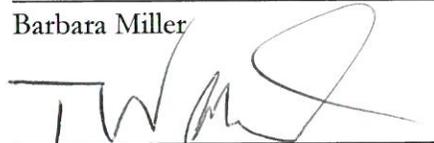
PETERBOROUGH
SELECT BOARD:



Ed Juengst



Barbara Miller



Tyler Ward, Chair