



TOWN OF LYNDON  
SELECTBOARD HEARING  
Zoning By-laws Flood Regulations Hearing  
April 14, 2021  
6:00 PM

Selectboard

Christian Thompson, Chair  
Nancy Blankenship  
Dan Daley

Officials

Justin Smith, Sean McFeeley  
Pauline Harris, Ken Mason  
Curtis Carpenter

Public

Kurt Nygren, Mark Bean,  
Steve Gray, Joe Buzzi, Marty Feltus  
Roni Leach, Sylvia Dodge, Len Gerardi,  
Holly Taylor, Chad Bigelow, Robert Lee

Christian Thompson, Chair of the Lyndon Selectboard, called the hearing to order at 6:00 PM. Mr. Thompson began the introduction to the hearing by introducing the Selectboard members and explaining the purpose of the hearing, which was to hear public comment on proposed changes to the Town of Lyndon's bylaws, primarily Article 11, the Flood Hazard Regulations.

Christian Thompson explained that at the last hearing the Selectboard voted to make some language changes primarily in Article 11.5.A.3. The changes were warned for tonight's hearing.

Christian Thompson at this point opened the hearing up to public comment on the warned bylaw. There will be no voting tonight. Mr. Thompson asked those wanting to speak to raise their hand, wait to be called on and state your name for the minutes.

Ken Mason pointed out a couple errors in the red lined copy. The errors were on the last sentence in section 11.5 A 3 a. "Such demonstration must be supported by technical data that conforms to standard hydrological engineering principles and is certified by a licensed hydrological engineer; or". The first "hydrological" should be changed to "hydraulic" and the second "hydrological" should be changed to "professional". This will match the language approved at the last Selectboard meeting.

Len Gerardi, who is representing Passumpsic Valley Land Trust (PVLТ) had several concerns. He questioned that if the bylaws are enacted, will the PVLТ property on the South end of town, anticipate higher river levels and velocities? Mr. Gerardi feels the flood plains owned by PVLТ are already seriously challenged. Concerned with lateral movement would exacerbate movement of banks. Curtis Carpenter explained that there would not be significant increases in the base flood elevation in the floodway, anywhere in town. A limited number of properties would potentially be developable because of the change in the bylaws. In his opinion, it would not adversely affect adjoining landowners. Len Gerardi asked if FEMA and Army Corp Engineers only looking at flood elevations or are they looking at flood velocities because of elevation increases? Velocity is a bigger concern for bank erosion for PVLТ. In response to Mr. Gerardi's concern with velocity, Ken Mason pointed out that the velocity would not change much. Marty Feltus, member of the Flood Hazard Regulation Work Group, also acknowledged that PVLТ does a lot for the Town and Village by preserving the lands. Most of PVLТ's land is already in the flood way. The change in the restrictions would affect the flood fringe. The elevation is very stable and flat so that when there is an increase in the water, it would spread out slowly.

Brooke Dingedine spoke to the permit Mark Bean applied for after the change to complete the fill at the NEK Trailer Park to get it out of the flood plain. It was 40% filled with 60% remained to be filled. An analysis was done by Nate Sicard and indicated that the mathematical calculation was so small it could not be calculated. Showing how minimal the effect would be.

Sylvia Dodge suggest that Mr. Gerardi's question regarding velocity be sent to the Agency of Natural Resource. Sean McFeeley agreed with Ms. Dodge in discussion it further and obtaining other opinions.

Marty Feltus endorses the Selectboard changes. It is the fairest way to solve the problem and provides applicants clarity of what is and what is not acceptable and is based on the FEMA Standards. Marty feels it is a prudent way for the Town to go forward.

Mark Bean asked that if questions are to be asked, they should be asked to an appropriate engineer, such as a hydraulic engineer.

Dan Daley asked a clarification question to the work group. Based on the proposed bylaws, where would the analysis for an adjoining landowner if a neighbor fills the flood fringe come in? Would a certified engineer be responsible for the calculations or would the adjoining landowner be responsible? Ken Mason suggested the PC & DRB hold a meeting together with all involved to review a "trial balloon" application. How is the DRB going to apply the new regulation to a project. What would they do with a hydraulic study? We must accept that the regulations are new and there most likely will be adjustments needed.

Curtis Carpenter spoke to FEMA's regulations affecting a section of town. FEMA study is not property owner to property owner. The data does not work one house to the next. The only other alternative is a no adverse impact using compensatory storage which does not work on small lots. You cannot have compensatory storage unless the property is hydrologically connected to the river. There is enough language in the bylaws that if an adjoining landowner has concerns, the DRB would need to ask the engineer to address it.

Sylvia Dodge, on the Working Group, unless it is written in the bylaws, the DRB cannot act on it. Marty Feltus feels the answer to Dan's questions is in 11 A.5.3 before you get to A & B. A neighboring property owner has ample opportunity to address their concerns to the DRB.

Pauline Harris believes that her interpretation of 3.A you can only limit properties in the same cross section as where the development that is taking place, by the limit that is placed by the FEMA Table 2 chart. Nothing in the bylaws allows the DRB to require more than is in the bylaws.

Brooke Dingleline feels there is confusion in the different roles the municipality plays. The Selectboard is the Legislative body (creating the law), the DRB is the judge (weighing the evidence presented) and Zoning Administrator is the Executive Branch (issuing permits out of the office, policing violations). The DRB members are not required to be an expert. The Selectboard cannot tell the DRB how to apply the bylaws. The DRB must apply the bylaws as written to each application that is presented.

Pauline Harris her concern is that section 3 A does not give the DRB the authority to restrict how much damage an applicant can cause to a neighbor. Nothing that allows them to send the applicant back to re-engineer the project to restrict the inundation beyond the cross section. ANR can only state whether it appears the application meets the bylaws. This is where Pauline feels the bylaws fall short.

Brooke stated that if the bylaws are not working, you can always amend them, just as you are doing now. Brooke also pointed out that it is up to the adjoining landowner to come to the DRB to express their concerns and hire an expert if necessary.

Pauline is concerned that every time an application to fill comes before the DRB in a particular area, the same adjoining landowner will have to hire an engineer each time? Also, 3A addresses properties in the same cross section as the development; that is what Table 2 refers to. It does not refer to properties outside the cross section. She does not consider a 9.6" rise as protection, or whatever the standard is for that cross section.

Ken Mason noted that section 5.a states "development in the special flood hazard area, but outside floodway limits, must not unduly increase base flood elevations or flood velocities". If you hire an engineer, they will have to develop an engineering study that proves it does or does not meet the bylaws. The DRB can also hire an engineer to review the study and get an opinion. A couple ways to change the bylaws: petition with 5% of

voter's signatures or the DRB can tell the PC it is not working, and the PC can take it up to change the bylaws. Nothing is cast in concrete.

Pauline Harris stated that the DRB does not have the authority to hire experts. If there was an issue, the DRB could, within the timeframe allowed them, they could reach out to the SB. It would be up to the SB to determine if hiring an expert is necessary. Once these bylaws are approved, there are going to be applicants that fill their properties. Once a project is approved and completed, there is no going back.

Sean McFeeley pointed out that the current process to update the bylaws has taken two years. If the PC needs to go back and address an issue, it could take another year and a half. Changes to the bylaws are not simple; it is quite a process. PC cannot change the bylaws, they can only make recommendations to the SB, who ultimately vote on them.

Sylvia Dodge agrees with 90% of the work from working group. The bylaws, as proposed, are very lenient standards that allow the max fill possible to allow the people in the special flood hazard area to remain in the National Flood Insurance program.

Holly Taylor asked the SB to pass through the bylaws that are before you tonight.

Christian Thompson closed the public hearing and thanked everyone for participating in the Zoom meeting. Appreciates the input by all involved. Discussion and possible a vote on the bylaw amendment at the next scheduled SB meeting on April 26, 2021.

Meeting adjourned at 7:18 PM  
Minutes taken by Justin Smith.  
Approved by the Selectboard: \_\_\_\_\_