



TOWN OF LYNDON
SELECTBOARD HEARING
Zoning By-laws Flood Regulations Hearing
March 17th, 2021
6:00 PM

Selectboard

Dan Daley
Nancy Blankenship
Christian Thompson, Chair

Press

Alek Wolfe
Amy Nixon

Public

Marty Feltus, Pauline Harris, Sean McFeeley,
Ken Mason, Sylvia Dodge, Brooke Dingleline,
Mark Bean, Kurt Nygren, Larry Willey, Laurie Willey,
Curtis Carpenter, Louis J. Buzzi, Tammy Martel, David
Stahler, Sr., Marty Feltus, Roni Leach, Todd Thomas,

Christian Thompson, Chair of the Lyndon Selectboard, called the hearing to order promptly 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 hold a public hearing on a new Flood Hazard Regulation section which was approved and forwarded from the Planning Commission to the Selectboard. The proposed Flood Hazard Regulation or some variation thereof, if approved would replace the current Section 11 within Lyndon's Zoning By-laws.

Christian Thompson laid out some basic guidelines for how the hearing would work. Mr. Thompson stressed the importance of addressing the Board with concerns and not attempting to talk over one another.

Christian Thompson at this point opened the hearing up to public comment.

Curtis Carpenter presented a detailed written report on the Flood Section and gave an overview, detailing what he believed were the key points to consider in the flood section and what he believed were the most misunderstood parts of the flood section. Overall, he felt the proposed flood section was a good compromise of ideas, he acknowledged that he would do a few things differently, but overall, it was a good compromise of ideas. Mr. Carpenter stated that in his opinion one change was necessary in order to make proposed section 11.5.3 A. read grammatically correct. He felt the three words which were changed at the final Planning Commission hearing "increasing exposure to" should be changed back to "newly exposing" or that the whole section should go back to the language the working group used for section 11.5.3.A. (see italicized below)

Development in the special flood hazard area, but outside floodway limits, must not unduly increase base flood elevations or flood velocities. Such development shall not be permitted unless:

a. it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the base flood water surface elevation within the cross sections in which the property is located, by more than the increase established in "Table 2" ("Floodway Data") of the Flood Insurance Study ("FIS") prepared by the Federal Emergency Management Agency ("FEMA"). The demonstration shall include a copy of the Flood Insurance Rate Map ("FIRM") identifying the upstream and downstream cross sections; the FIS Table 2, identifying the upstream and downstream cross sections and associated established increases; or,

Sean McFeeley from the Planning Commission gave his opinion that the three-word change made by the Planning Commission on February 3, 2021 should remain as it had significance for protecting existing property owners with existing structures within the flood fringe.

Sylvia Dodge former Planning Commission member and member of the working group concurred with Mr. McFeeley that the three-word change provided protection to existing property owners throughout the Town who

were located in the flood fringe. She stated that on several occasions Sasha Pealer stated to the Working Group that FEMA's table was never intended to be used as a development standard. To her knowledge there is no other town in Vermont that use the table as the flood hazard standard for the Special Flood Hazard Area By-laws.

Mark Bean asked Curtis Carpenter if in his opinion the three-word change in fact changed anything.

Mr. Carpenter stated that he did not believe it changed anything, he personally just felt the wording was a little clumsy. Mr. Carpenter felt because the base flood language is still in the section nothing really changed. Mr. Bean added that he concurred with Curtis Carpenter's comments.

Pauline Harris followed Sylvia Dodge's comments that the table 2, which is being referenced is not there to tell you how much you can fill it is there for insurance purposes for the National Flood Insurance Program (NFIP). The table is to determine if an individual can get insurance and what the cost of that insurance will be. The table is not used to determine if a particular project will have an effect on other nearby properties. Ms. Harris felt LIDAR standard along with a no negative impact standard can actually determine whether or not other properties will be impacted. There must be an no negative impact standard included, it is not okay to consider a standard where development is considered while potentially harming others. Ms. Harris felt it was important to understand that there is a difference between town-wide water level and someone adding fill which diverts water onto an adjoining low-lying property.

Brooke Dingleline, who was representing Mark Bean and Bean's Mobile Homes, Inc. stated that her main concern was that the by-laws provide an applicant with a clear standard for proposing a development free of ambiguity. In particular, she stated that she did not understand what section 11.5.3 A was stating. She also asked the board to consider reality when thinking about the flood bylaw. What is the likelihood of every cubic inch of the flood fringe being filled, in her opinion it was not very likely to occur given the topography etc.

Pauline Harris stated it was important for the Selectboard to understand that if Section 11.5.3. A were to be reverted back to relying on table #2 in some cases neighboring properties that could be impacted would not be considered because they are located just on the other side of one of the cross sections. She stressed the importance of keeping the language relating to same "Reach" in the flood regulations. While there are properties that currently flood when there are high waters, there have been several occasions over the years where filling has changed the path of the water and sent it to the "new low spot".

Nancy Blankenship asked about concerns over the vagueness of the term "reach" within the version of the flood regulations that were forwarded to the Selectboard, and questioned whether the use of table #2 was a better option for section 11.5.3 A. She specifically mentioned Sasha Pealer mentioning that the term "reach" was arbitrary.

Curtis Carpenter stated that there was a definition for "reach" within the flood regulations section, it is a solid definition and it is well sourced. The definition of "reach" was displayed on the video conference for everyone to review.

Chris Thompson asked how a small reach is defined and would a cross section suffice and isn't a reach arbitrary.

Curtis Carpenter said it isn't arbitrary a hydrologic engineer would be able to decipher it, it is based on stream conditions, slope, elevation and matters like that. An engineer is going to have to come to the board and defend their position on the reach, an engineer is going to base their findings on the existing conditions. If you only use cross sections, you are going to run into problems if a project is right on the border of two cross sections. If you are going to consider neighboring properties, there will be instances when cross sections will not work because you could have properties in two different cross sections. Neighboring properties will not always be in the same cross section as the proposal.

At this point Evan Carlson's video comments were played for the group.

Mark Bean stated that he agreed with Curtis Carpenter's and others comments that the best option would be to go back to the wording submitted on September 3rd.

Todd Thomas stated that he largely agreed with Curtis Carpenter's comments and his written document. He also stated that he was impressed by the work of the working group. He felt the language produced by the working group for section 11.5.3 A was the way to go. In his opinion, it would be much easier to administer as a Zoning Administrator. He wanted to focus his comments on the river corridor section. He began by saying the best protect against flooding is fill and Lyndon has some of the most prohibitive bylaws currently in the State, which do not allow for development, re-development, or protection against flooding. He suggested that the Selectboard review the river corridor map and consider removing parcels commercial district (such as White's Plaza) which the Town would never let the river meander through anyway. He said in a rural area it makes sense to let the river choose its path, but in an area, which is already developed the Town is not going to let the river choose its path. These developed areas are where you are going to armor the river to prevent it from damaging existing development. His final point was that if you are not going to allow the river to meander through these commercial areas anyway why protect them like that is what you are going to do. His recommendation was to exempt the properties from the river corridor, which the river will not be allowed to meander through and allow these properties to further develop and protect themselves.

Ken Mason stated that the working group had asked the Selectboard to petition ANR for removal of he believed were 8 parcels from the river corridor. ANR has since agreed to remove those parcels from the river corridor. Mr. Mason added that the proposed flood regulation section now will allow an applicant to apply for and receive a permit for development within the river corridor, after review and approval by the Development Review Board which was not previously the case. The issue of allowing development within the river corridor has been addressed.

Curtis Carpenter echoed Ken Mason's comments and basically said within the river corridor in-filling will now be allowed and will be allowed to fill in the river's shadow.

Sylvia Dodge wanted to follow up on Curtis' and Ken's comments by stating she was still in favor of moving forward with the draft that was before the Selectboard for this hearing. She wanted to note all the things that have been changed that Curtis and Ken just spoke about. Filling will be allowed and development in the river corridor will now be allowed, where it was not before. However, if the no adverse impact standard is removed many existing properties will be overlooked. In her mind, it is not acceptable to ignore existing properties and the possible damage they may incur simply because they already flood. Her concerns are for those who where they live and cannot afford to add fill or otherwise afford to protect their properties.

Dave Stahler, member of the Working Group stated the worse service we can do is to be ambiguous. He felt the recommendation produced by the working group was clear with nothing arbitrary. He felt it was for the most part fair to everybody and that it was the way to go.

Marty Feltus, who was a member of the working group echoed David Stahler's comments. She felt that the language they presented in September, using the table provided the clearest direction to the Applicant and the Development Review Board. In her opinion there was language added by the Planning Commission that was "feel good language" that would be difficult to quantify in any meaningful way. She said either way we need to move forward with one version or the other, but in her opinion the working group's version was not meaning that we are allowing other people property to be damaged.

Pauline Harris reiterated that the Working Group's version does not protect adjacent low lying property owners. Having the no adverse impact language, which was passed unanimously by the Planning Commission at least it says no negative impact there.

Brooke Dingleline wanted to echo David Stahler's and Marty Feltus' comments by stating it was important that there not be ambiguity within the by-laws and that is the reason the Working Group's version in her opinion was the better alternative.

Roni Leach stated in response "to filling being the only way to protect yourself" then what happens to the people that cannot afford it, not everyone can just afford to fill whenever they need to. She feels that is just not right and does not see an end to that. She strongly believes no adverse impact needs to be a part of the language.

Sean McFeeley once again stated his believe that no adverse impact needed to remain in the by-laws.

Curtis Carpenter stated that he really believed the Selectboard needed to go with something clearer because his read of the 11.5.3 A with the three-word change does not make it a no adverse impact standard. His concern is that if we cannot all agree on what it says now it is a recipe for disaster for the Development Review Board later.

Sylvia Dodge said that she sat in many meetings with Ken and Marty where Sasha Pealer stated that the Working group's version was problematic too. Sylvia stated that Sasha Pealer said that the data sheet was not a good way to go.

Ken Mason said that if there was consideration of going back to table 2, he felt a statement such as "the demonstration must be supported by technical data that conforms to standard hydrological engineering principles and is certified by a licensed hydrological engineer".

Dan Daley made a motion to close the hearing at 7:45 PM, Nancy Blankenship seconded and the motion to close the hearing carried 3-0.

At this point Chris Thompson asked for comments from the Selectboard.

Dan Daley stated that he appreciated everyone's comments. He felt that over time it had become clear in talking with people on both sides that this was a passionate and divisive issue. He said he did not believe it is the intent, nor are we attempting to cause damage to existing property owners. He also believes the Selectboard understands and recognizes the need for development. He continued by saying Lyndon cannot be compared with other Towns, we are in a totally different geographic situation than other areas. Over the last 20 years if you go to the FEMA site you realize that Lyndon is the second most compensated site in Vermont, second only to Barre. Mr. Daley stated the need to find a happy compromise, none of us enjoy this process. Mr. Daley said that he will take everything that has been said into consideration, he added that the areas of concern seem to be focused at this point, and he will take people's thoughtful and heartfelt testimony into consideration when he makes his decision. Mr. Daley said he believed the Selectboard's role at this point was to find something everyone can live with.

Nancy Blankenship concurred with Dan Daley's comments that the Selectboard will need to try and find something that everyone can live with. Ms. Blankenship stated her intention is to serve the community and serve it well. The information that has been received has been amazing and the volunteerism throughout the process has been amazing.

Chris Thompson asked the other Selectboard members if he was correctly hearing that both were not prepared to make a decision this evening. Both Mr. Daley and Ms. Blankenship said they would like some time but had no intention of dragging this out.

Chris Thompson presented his idea on a compromise which he read from a prepared statement which is attached.

He asked for public comment on his proposal.

Nancy Blankenship made the motion to re-open the hearing. Dan Daley second, and the motion to re-open the hearing at 8:01 PM carried 3-0.

Ken Mason commented that what Mr. Thompson presented was essentially what he stated at the close of the first part of the hearing. He reiterated that he felt the additional language he mentioned earlier was important to add. Mr. Mason felt that applying a flat percentage to each cross section might not work because some cross sections allowed a .7-foot rise while others were only .3, if a standard percentage were to be applied some cross sections would allow very little fill to be added.

Curtis Carpenter pointed out an issue with the proposal it refers to the phrase “existing and anticipated development”. The applicant will need to calculate existing development which can be done, but anticipated development is also included (this language comes directly from FEMA). This calculation is based on the whole flood fringe being filled. When you combine existing and anticipated fill you end up with the number in the chart you cannot cut it in half.

Marty Feltus stated she had approached this concept with Sasha Pealer previously and Sasha concurred with Curtis’ point that you cannot get around the anticipated development portion because that is part of the FEMA standard and therefore it would be very difficult to calculate a certain percentage of that. Ms. Feltus said she appreciated the idea, which was presented, but she is unsure it is workable.

Sylvia Dodge said if the maps were to be used a certain percentage, which is less than 100% should be used. She also pointed out that not all of Lyndon’s flood area has cross sections so that would be problematic.

Pauline Harris revisited her concern that if the table is used a neighboring property could be in a different cross section and the effects on that property would not be considered. She believes this is where the importance of the language referring to reach comes in; it would allow for a neighboring property in a different cross section to be considered. Pauline Harris mentioned that using the LIDAR standard would be the best way to track past development. The benefit of LIDAR, which relies elevations imaging from satellites is that it is current and up to date and does not rely on someone else to file paperwork to make sure all filling is accounted for.

Mark Bean also stated he had an extensive conversation with Nate Sicard regarding LIDAR and Nate told him the most accurate information would be the information found in the FEMA tables because they were “boots on the ground surveys”.

Brooke Dingedine continued to be concerned by the ambiguity of trying to use a percentage and questioned if it would create a first line issue where the first owners to apply get a permit and everyone else thereafter does not get to develop.

Ken Mason stated that these by-laws are not going to fit every situation. Some of this is going to be determined after we receive and review some applications.

Todd Thomas concurred with Curtis Carpenter’s assessment that it would be difficult to take a percentage of table 2 and apply it in any meaningful way. He also added although it is not what is in front of the board right now LIDAR would be a good way to do this, he agreed with Pauline Harris on this point.

Dan Daley made a motion to close the hearing at 8:39 PM. Nancy Blankenship seconded, and motion carried 3-0.

Chris Thompson confirmed there was no intent to vote currently.

Dan Daley thanked everyone for their information.

The next steps in the process were briefly discussed.

Meeting adjourned at 8:43 PM

Minutes taken by Justin Smith

Approved by the Selectboard: _____