

JEFFERSON TOWNSHIP COUNCIL

Regular Meeting

March 16, 2011

Municipal Building, Council Chambers

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Roll Call

Present	Absent
Mr. Dunham	
Mrs. Merz	
Mr. Sanchelli	
Vice President Birmingham	
President Yocum	
Lori Harvin, Township Clerk	

Mrs. Harvin said, "Let the record show that Mayor Felter and Administrator James Leach are present. Also present is Township Engineer, Jeff Elam.

Salute to the Flag

President Yocum asked everyone to rise for the Pledge of Allegiance.

Notice of Presiding Officer

President Yocum said, "This Regular Council meeting for March 16, 2011, commencing at 6:30 p.m. has been properly noticed in accordance with the Open Public Meetings Act by notice to the official newspapers of the Township on March 10, 2011."

Resolution #11-30: Approval of Bills (37-A)

Motion: Merz, second Sanchelli

Mr. Dunham	Aye
Mrs. Merz	Aye
Mr. Sanchelli	Aye
Vice President Birmingham	Aye
President Yocum	Aye

Resolution #11-31: Authorize Passage of Consent Agenda (37-B)

Motion: Sanchelli, second Merz

Mr. Dunham	Aye
Mrs. Merz	Aye
Mr. Sanchelli	Aye
Vice President Birmingham	Aye
President Yocum	Aye

Resolution #11-32: Appropriation Transfer for 2010 (37-C)

Motion: Birmingham, second Dunham

Mr. Dunham	Aye
Mrs. Merz	Aye
Mr. Sanchelli	Aye
Vice President Birmingham	Aye
President Yocum	Aye

New Business

Lake Swannanoa Dam Restoration Presentation

Yocum announced that the Council would not be reaching any decision this evening and the purpose of this meeting is to hear from the affected residents. This matter will be placed on the April 6 Agenda for a Council discussion. Yocum turned the meeting over to the Township Engineer, Jeff Elam.

Elam presented a Powerpoint presentation detailing the engineering timeline, the scope of the construction work and an estimate of the construction costs of \$250,000. (37-D)

Miscellaneous/Public Portion

Yocum opened the meeting up to the public for questions and comments.

Jeremy Dale of 17 Moquis Trail came forward and spoke of the lake as an asset to the community.

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Al Salzano of 3 Lenape Trail came forward and spoke on behalf of the Board of Lake Swannanoa and the public benefits to restoring the dam.

Eileen Born, Esq. came forward and spoke as the attorney for the Lake Swannanoa Lake Association. Born reviewed the Dam Safety Statute from the time of the original repair work to the present.

David Gray, Esq. of the law firm Pompelio, Foreman and Gray came forward and stated that he is representing Jim and Kathy Sisco, lakefront owners who are not a part of the Lake Association. Gray questioned whether the Lake Association has the authority to make these decisions under the chain of title when the Sentinal Society still has outstanding membership shares. Gray referred to Judge Bosinella's decision and stated that there is currently pending legislation which would overturn that decision.

Molnar of 15 Violet Trail came forward and spoke against the loan and assessment.

Ferrigno of 5 Cree Trail came forward and said he was told he would not have any responsibility with the lake when he purchased his home.

O'Connor of 9 Hopi Trail came forward and stated that he was told if there was no covenant on his home, then he would have no responsibility.

Peterson of 16 Yuma Trail came forward and said that she was told the Lake Association was optional and she does not receive any enjoyment or benefit from the lake.

Schaefer of 5 Osage Trail came forward and said that there is a sign on the Lake that says "members only". Schaefer said that his deed does not mention membership in the Lake Association and he feels it will devalue his home if his property is assessed.

Balogh of 32 Pequot Trail came forward and said there is a safety issue involved. The dam ensures that the roadways do not become flooded so emergency vehicles can have access to the homes.

Reid of 10 Yuma Trail came forward and said he is interested in reviewing the options that the Council has explored. Reid said he is not comfortable with being told why this benefits him and he feels it does not benefit him.

Yocum said when the Council does make a decision on how to move forward, it will be done by Ordinance. When that Ordinance is introduced, there will be an announcement of when the public hearing will be held. Cohen said there will be a public notice.

DeLorme of 15 Abenaki Trail came forward and said his family has not used the lake because of its condition. DeLorme said he feels it will be harder to sell a home that has an assessment attached to it.

Presti of 30 Moquis Trail came forward and said the lake is in poor condition with very low water levels on the end of the lake that she lives on. Presti noted the poor condition of the relations between the neighbors.

Rietzel of 9 Seminole Trail came forward and said there may have been some disturbances in the Lake Association, however, now things are better and with the repairs the water levels can be brought up. Rietzel appealed to the community to help with the repairs.

Gerry Geary of 3 Osage Trail came forward and said he would like a rendering of how the Council makes its decision.

Hennigan of 33 Sleepy Hollow Drive came forward and asked if the Council is

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the co-borrower on the loan, would the Council sign if it is known to them that the original entity will default; also, if the original entity does default, is there a different assessment that would be used to recoup the money.

Cohen said according to the statutory scheme, since the Association does not have any assets, the repayment of the loan is through an assessment on the property owners who benefit as a result of the maintenance of the lake. Alternatively, the breaching of the dam would result in a depreciation of property. The question becomes who benefits as a result of the repair of the dam and the maintenance of the lake. The Statute says those who derive a benefit.

Hennigan questioned why the town has to co-sign the loan.

Cohen said there is a State Statute, the Neepaulin case, which is not a reported decision. Cohen said the basic holding of the case does not really deal with who is to be assessed but rather whether or not the town must be a co-borrower with reference to the loan taken out by the Friends of Lake Neepaulin. The difference in the facts of this case is the town of Wantage voted to be a co-borrower and passed an ordinance imposing an assessment. After all that, they had a public meeting and then decided to reverse the decision. The Lake Association brought an action against the town and the Judge held that they must go forward as co-borrowers. Cohen stated that he is unaware of any law that indicates if a property was in an original subdivision it must be assessed. Cohen said that Ms. Born makes the argument that everyone must be assessed and her correspondence has been made available through the Clerk's Office. Cohen said that this is fact sensitive and it depends on the facts of each situation. This set of facts should stand on its own.

Recess

The Council adjourned at 8:15 p.m. and reconvened at 8:20 p.m.

Fadden of 24 Lenape Trail came forward and said that he feels making the lake exclusive was a mistake, however, it is a nice lake. There are problems in the north lake, but the State said the water has to be down because of the dam. Fadden commented that the Association is liable if anything happens when unauthorized people are using the lake. Fadden asked if everyone could come to a common ground.

Herzfeld of 18 Carib Trail came forward and gave a brief history of Lake Swannanoa. Herzfeld said he does not have an interest in the lake and it is his concern that a payment in this assessment will place a responsibility on everyone that will continue for future repairs.

Sweet of 15 Carib Trail came forward and said she and her husband were asked if they would like to be members of the association when they purchased their home and they declined. Sweet spoke against the assessment.

Smath of 61 Hopi Trail came forward and spoke about the wild life and nature around the lake.

Cotter of 24 Yuma Trail came forward and said he has no association with the lake and his lawyer says he has no obligation for the lake.

Zedack of 3 Seneca Trail came forward and said he does not live on the lake and has no attachment to the lake. Zedack said he never wanted to belong because of problems like this. Zedack said if there is an emergency issue, then the whole town should share in the cost.

Gilliam of 40 Pequot Trail came forward and said she enjoys the lake community and feels there is a benefit from the lake.

Burnett of 15 Hopi Trail came forward and said she investigated lake fees when

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purchasing this home and chose it because there were none.

Connolly of 28 Hopi Trail came forward and commented on postings concerning the association phoning the police if anyone is trespassing within 10 feet of the lake.

Lynch of 15 Seminole Trail came forward and commented on the 10 foot strip and the liability for the association if someone is trespassing. Everyone in the Ringling properties has a right to join the association. Lynch spoke about the community benefits.

Minch of 5 Pueblo Trail came forward and stated that he is against the town co-signing and assessing properties. Minch spoke about the liability of being involved in the payment for the lake improvements. Minch suggested that the town take on the repairs and assess everyone in the town.

Frawley of 11 Madoc Trail came forward and stated that he objects the plan to assess all the property owners for the maintenance of the dam. Frawley said the responsibility belongs to the owners of the dam.

Sienkiewicz of 35 Sleepy Hollow Drive came forward and said if the town wants to keep the lake, then the entire town should share in the assessment, not just a few property owners.

Reid of 10 Yuma Trail came forward and commented that he does not see the need for the lake for fire protection. Reid said it has not been proven that the lake has a direct value on his property. Reid said that no one who is not in the association wants to have an assessment on their property to pay for a lake that they have no interest in.

DeLorme of 15 Abenaki Trail came forward and said that he lives 4 blocks from the lake and he does not see how the lake is of benefit to him.

Geary of 3 Osage Trail came forward and questioned how the whole community could have a liability for the lake if they are not part of the lake association.

Born, the Attorney for the Swannanoa Lake Association came forward. Born described the process that has been followed since the Association approached the Council in November of 2006. Born said the town wanted the Association to hold public meetings and 3 were arranged and held. All the information was put out to the members of the community. Born commented that a turning point was when Mr. Elam became involved and the cost was cut by 1/3. Born stated that the Statute was changed in 2003 to address the problem of who should be assessed and she urged the town to use the direct assessment according to Statute.

Reid of 10 Yuma Trail came forward and said the price for the repairs went from \$1.4 million to \$250,000. Reid said that compared to 3 years ago, the price has decreased and the 120 in the Association are still trying to have everyone assessed.

Ecker of 7 Cree Trail came forward and asked about the first loan.

Cohen said the town co-signed for the first loan in 2003, however, the laws did not provide for an assessment at that time. Now there is a Statute that provides for an Assessment for Benefits to be collected by the town.

Salzano of 3 Lenape Trail came forward and spoke about the cost benefit analysis of the project. Salzano spoke about the fire protection, the water drainage and property values.

Rhinesmith of 14 Hopi Trail came forward and said that her house is on the market and she is concerned. Rhinesmith said if this is such a benefit, then the whole town should pay for the assessment.

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Scalora of 36 Pequot Trail came forward and said he appreciates everyone that came out for this meeting and he thanked the Council.

Sendik of 26 Pulaski Drive came forward and said that the members of the Association should pay for the lake because they purchased their homes knowing it was their responsibility.

D'Angiolillo of 26 Cayuga Trail came forward and detailed the care of the lake and community. D'Angiolillo said that the State has forced this on everyone.

Leccacorvi of 17 Hopi Trail came forward and said the lake is the responsibility of the Association and perhaps if they cannot afford the lake the town should take it over.

Pereira of 5427 Berkshire Valley Road came forward and said he is surprised by the lack of interest in the lake. Pereira said that the water is almost pure and he welcomes and encourages everyone to investigate the lake.

Heller of 16 Hopi Trail came forward and said he is against an assessment on his property because he made sure when he purchased his property that there was no attachment. Heller asked the Council to consider whether they would like this type of assessment placed on their property.

Marinello of 26 Starlight came forward and asked about the liability of the contractor who did the original repairs to the dam and is there any recourse. Elam stated that in August of 2000 a 500 year storm hit the dam and it was not sized to hold that amount of water. The dam was designed and built to the regulations current to that day. Marinello asked what is being done so this does not happen again. Elam said that the work that is being required by the State requires a higher level of safety than was required in 1998.

Yocum thanked everyone who attended the meeting. Yocum said the Council has tough decisions to make. Yocum commented that Elam became involved because the \$1.4 million number did not make sense and the price came down to \$250,000. Yocum said that many times the engineering and design brings the cost up and Elam has a tremendous amount of experience. Yocum announced that this matter will be on the April 6 Agenda.

Adjournment at 9:35 p.m.

Motion: Merz, second Sanchelli

Mr. Dunham	Aye
Mrs. Merz	Aye
Mr. Sanchelli	Aye
Vice President Birmingham	Aye
President Yocum	Aye

Dated: March 16, 2011

Attested:

Approved:

Lori Harvin, Township Clerk

Richard W. Yocum, Council President