

Update on the Lake Anasagunticook Dam
May 1, 2008

On April 8, 2008, the Canton Selectmen presented a Purchase/Sale Agreement to Ray Fortier, the Canton dam owner, making an offer to buy the two parcels connected by the dam and the parcel with the water tower for \$60,000. Mr. Fortier declined the offer on April 24th and reported that he had already sold the dam to R. J. Fortier Hydro Power, Inc.

With the failure to purchase the property, the Core Group for a Permanent Solution (representatives from the Hartford and Canton Select Boards, Canton Water District, the Lake Anasagunticook Assn. and the Mill Pond Assn.) are resigned to two final options for gaining control and resolving the long standing difficulties to stabilize the dam safety issues and water levels in Whitney Brook and Lake Anasagunticook.

1. Let the State's case run its course in Oxford County Superior Court and the dam abandonment process
2. Take the three properties and the dam with its flowage rights by eminent domain.

On March 11, 2008, Phyllis Gardiner, Assistant Attorney General filed her official complaint on behalf of the DEP and MEMA against the dam owner for repeated violations of the State's orders. The AAG received a response from Mr. Fortier's attorney, Mitchell Flick, on April 25th. The State has 30 days to review this document. The full complaint, "State, DEP, MEMA v. Fortier", is posted on the lake association website www.lakeanasagunticook.org under Dam Updates. Clearly, there are only two options the State is offering Mr. Fortier: make the ordered repairs or abandon the dam. The State's case against the dam owner could take some time to work its way through the courts and logically would result in abandonment of the dam. The abandonment process, as spelled out by the State law, also takes time. In the meantime, the dam is not repaired and the gates must remain open.

The Town of Canton and/or the Canton Water District can take these properties by eminent domain. Filing a letter and including payment for the "fair market value" of the properties could immediately change the ownership to either municipal entity. Mr. Fortier would have the right to appeal the "taking" price and it would be up to the court to decide. Eminent Domain requires the approval of the voters if taken by the Town and the Trustees if by the water district. Getting a "fair market appraisal" for the dam will not be an easy matter for either the Town or Mr. Fortier and the final price to be paid for the dam, attorney and appraisal fees is unknown.

The State will require a proposal from any new owner of the dam property detailing a plan to meet the current dam safety order requirements and MEMA would issue a new dam safety order to the new owners, specifying what must be done and setting deadlines. The Core Group plan would include removing the old dam, repairing the left embankment (Rt. 140 side) and building a new spillway dam to stabilize water levels. Once there is a transfer of ownership, grant funding could be sought and the dam would convert to an inter-local entity for maintenance and operation.

There is an urgent need for plans to stabilize summer water levels. The "flowage rights", the right to flood the lake and brook as regulated by the 1996 Water Level Management Plan, belong to the owner of the current dam. These rights are needed to complete an application for a NRPA permit required to build a temporary dam. The applicant and owner of a temporary dam would be the Canton Water District and, as a quasi-municipal agency, would have limited liability on Maine laws. There are negotiations underway to secure both flowage and property rights to build a four foot high, 110' long

between the water district and Whitney Brookside properties near the mid-way point on the brook which could raise water levels about half way between the current low level and the normal summer levels. If these rights are not given soon, water levels are likely to be no different that last year.

To acquire the dam properties, build a temporary dam and meet the State's requirements for a permanent dam, a yet undetermined amount of money needs to be raised. Canton voters appropriated \$22,000 at the March 15th town meeting "for the acquisition of the dam property in conjunction with other government entities or take any other action relative thereto." A similar article will be on Hartford's June 12th Town Meeting Warrant with a dollar amount to come from the floor at that meeting. The lake association has \$2,500 in a Dam Fund and about \$9,000 in pledges has been received from individuals around the lake. Offers from those with needed expertise and pledges of financial support would be gratefully accepted.

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