

Northside News



Trail in Minute Man National Historical Park

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Lincoln's Neighborhood Newsletter

November 27, 2018

!! The 93.9 MILLION DOLLAR QUESTION !!

December 1st Town Meeting and December 3rd Ballot

**Let's be sure to vote on the proposed School Building project!
Up or Down, it's important that we come together as a
community. It is the biggest financial decision the Town will
make in our lifetimes. Let's all have our say...and then
support the outcome.**

What's Hot

**Bypass Road Neighborhood and Town Victorious in McLean
Hospital's Lawsuit (See *McLean Hospital* below)**

Overdue DPW Study to Conclude Soon, Maybe (See *DPW* below)

**New Minuteman High School Building is on Schedule, Check Out
the Drone Video! (See *MM Tech* below)**

**Solar Project at the Transfer Station Site Hits the Pause Button
(See *Solar Project* below)**

Plus....Handy Link to the Lincoln School Building Project

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McLean Hospital



Residences at 16 and 22 Bypass Road

After waiting 11 months, residents in the Bypass Road neighborhood were relieved to learn that the Massachusetts Land Court rejected McLean Hospital's proposal for a psychotherapeutic facility, ruling that it was not exempt from Lincoln's residential zoning.

Readers may remember that McLean filed suit against the Town two years ago, arguing that the Zoning Board of Appeals was wrong to reject its program located in two adjacent homes that the hospital bought on Bypass Road. The key issue in the case was whether the proposed use—a residential program for teen age males using Dialectical Behavior Therapy (DBT)—was “education” within the meaning of Chapter 40A Section 3, the so-called Dover Amendment. This section of the Massachusetts General Laws allows nonprofit education programs to locate anywhere, overriding most local zoning restrictions.

The expensive and contentious saga began when McLean purchased the properties without a “permit contingency” that would have allowed it to back out of the purchase if the necessary permits could not be acquired from the Town. Several months after purchasing the homes for a total of nearly \$ 3 Million, McLean discovered that permits would not be granted.

McLean’s decision to go forward with the purchase was almost certainly influenced by a [memo](#) from Lincoln Town counsel Joel Bard, prepared at Town expense and posted on the Town website. He opined that the proposed use would be considered education under the Dover Amendment. The Land Court disagreed, holding that the proposed use was primarily "therapeutic and curative," not educational.

After McLean purchased the properties in May 2016, they filed an application with the Planning Board for Site Plan Review, a required step in the permit process. Although the Planning Board has authority to deny approval of a Site Plan if the proposal conflicts with the Town's Zoning Bylaw, it accepted Mr. Bard's opinion and approved the Site Plan with some minor modifications. The approval was followed by the issuance of a building permit from the Town's Building Commissioner, who also accepted Mr. Bard's opinion. The building permit was quickly appealed by the Bypass Road neighborhood. The appeal was heard by the Town's Zoning Board of Appeals ("ZBA"). The ZBA ruled in favor of the neighborhood by finding that the proposed use was not "education" and therefore not entitled to an exemption from the Town's Zoning Bylaw. McLean then appealed the ZBA's decision in Land Court. The neighborhood paid the entire

cost of their legal representation at the ZBA hearing and the majority of the cost of the trial in Land Court, during which the neighbors' lawyer and the Town's independent Special Counsel Jason Taleran collaborated. Town Administrator Tim Higgins reports that the Town spent about \$ 50,000 in the trial. The neighborhood has spent approximately \$ 110,000 including its appeal to the ZBA.

Last winter, the neighborhood filed a petition for the March 2018 Annual Town Meeting, seeking recovery of at least part of the substantial legal fees they incurred in fighting the McLean proposal. They met with the Selectmen a few weeks prior to the Town Meeting with the expectation of discussing their petition. When they arrived at the meeting, they were surprised to find that the Selectmen had already received an opinion from Mr. Taleran that their petition ran afoul of an "anti-aid" provision in the Massachusetts Constitution that barred financial relief for the neighborhood. The neighbors received no advance notice of this opinion and they were not prepared to discuss it. The Selectmen stated that they believed their only alternative was to reject the neighborhood's petition and, with apologies, omit it from the warrant for Town Meeting. A video of the Selectmen's meeting is available [here](#).

The Land Court's decision flatly rejects McLean's (and the Planning Board's) view that the proposed program is "educational." Judge Karyn Scheier's [decision](#) notes that:

In this case, the...[program] components are not the type of everyday living skills which are the focus of the cases cited ...interpreting the meaning of "education" under the Dover Amendment. ...

In this court's view, the expansive case law interpretation of education does not reach the use proposed for two reasons: First, to the extent the cases have broadened the traditional definition of education (i.e. coursework in school settings), the cases have embraced teaching in non-traditional settings, or to non-traditional learners, or both. The nature of the curriculum has been what the courts have characterized as "core life skills" such as cooking, shopping, job seeking... [etc.]...McLean's proposed program does not teach such core life skills. Instead the skills training offered by [the program] targets "emotional dysregulation" caused by Borderline Personality Disorder and related mental health diagnoses. ...

... [T]he purposes that are primary and dominant are therapeutic and curative, providing individuals who need significant intervention and tools at their disposal to help them deal with the inability to regulate their emotions due to mental illness.

...

[T]o conclude that the structure of the program essentially transforms a therapeutic program into an educational one for the purposes of Dover Amendment protection would ... elevate form over substance.

The decision was filed by the Court on October 22, 2018. At the Selectmen's first meeting following release of this decision, on October 26 at 7:30 AM, the case was discussed in Executive Session, making a full and open conversation with the neighborhood impossible. One neighborhood resident did attend the early morning meeting and was asked to leave. The explanation given for the Executive Session was that the Town was potentially still in litigation because the 30-day appeal period had not expired.

As of this writing, McLean has filed a Notice of Appeal. It is not clear at this time whether this is merely a formality to preserve their rights or whether they

actually intend to pursue an appeal. During the pendency of the appeal, they may try to sell the homes, or they can propose a different program that is more consistent with "education" as described in numerous judicial precedents.

The Selectmen have posted a [Press Release](#) that concludes with:

"Going forward, we will reflect on the process and evaluate what worked well and where there are opportunities for improvement, to help inform our response should a similar proposal come forward in the future."

DPW



The DPW Facility on Lewis Street

The Town's DPW Study is reportedly near completion. Northside News has been following this study because its recommendations could have important negative implications for North Lincoln and Minute Man National Historical Park. Authorized in September 2017 at a cost of \$ 9800, the study was originally expected to take approximately 3 months to complete. The engineering firm Weston and Sampson ("WS") was engaged by the Town to study options for relocating and consolidating DPW operations. The request for the study emanated from the South Lincoln Planning Implementation Committee ("SLPIC"), a subcommittee of the Planning Board tasked with revitalizing the South Lincoln commercial area.

The Town's four acre DPW site at the end of Lewis Street has been targeted for several decades as a Town asset that could potentially be reused for residential or mixed-use development. Those who advocate relocating the DPW facility have fixated almost exclusively on moving it to the transfer station site in North Lincoln. However, no private developer has ever come forward to underwrite the cost of relocating the DPW and reusing the site, a commitment that would almost certainly exceed \$ 3 million per acre plus the unknown cost of any environmental cleanup that might be necessary.

WS delivered an interim report to SLPIC on June 19, 2018. Their [contract](#) tasks include an assessment of DPW space requirements and an analysis of potential sites for relocation and consolidation of DPW functions. However, their presentation veered in another direction. They spent most of the meeting discussing the present condition of the DPW facility and arguing that the Town needs a new facility, regardless whether operations relocate or remain on Lewis Street. They noted that they have designed many DPW facilities for other towns, and they would be happy to do the same for Lincoln.

Although WS had not begun their evaluation of alternative sites, they provided a [chart](#) describing 10 factors they would use in their analysis. Each factor had several sub-factors, and each sub-factor had a proposed weighting. Social and environmental impacts, normally of great concern to Lincoln's residents, were given a total weighting of 15%. Impact on historical sites, such as Minute Man National Historical Park, was - almost absurdly - given a weighting of only 4%. One resident who attended the meeting expressed hope that the Town will resist the mechanical application of an inherently subjective and debatable set of weighting factors. There appeared to be a loose consensus among SLPIC members that the weighting factors would be reexamined, if they were used at all.

Minuteman Tech



Construction of the new Minuteman High School is on schedule. The general contractor reports that they expect the school to be completed in time for occupancy at the beginning of the Fall 2019 semester. The project began 16 months ago with extensive clearing and blasting of the 10 acre site on the Lincoln side of the school's property. The steel structure began to take shape last Spring and interior work is now underway. A recent drone video of the project can be viewed [here](#).

As part of the Site Plan Approval granted by the Lincoln Planning Board, the project will include 100 small trees to screen the project from the Mill Street neighborhood. Plantings are scheduled for the Spring and/or Fall 2019 planting season. Neighbors are encouraged to think about the best locations for plantings

and to provide input to the Town Planning Department. Northside News will alert the neighborhood if and when a walk-through of the site is scheduled.

The new High School comprises approximately 265,000 square feet of classroom and technical training areas at a total cost of about \$ 145 million (\$ 547 per square foot), of which \$ 45 million is funded by the Massachusetts School Building Authority and the balance by the district member towns. Lincoln voted to leave the district at a special Town Meeting in 2016.

Solar Project at the Transfer Station



Proposed Solar Site on Capped Landfill (left); Nearby conservation trail (right)

The 2017 Annual Town Meeting approved the concept of a solar photovoltaic array on the capped landfill adjacent to the Town transfer station. Last February, Town Administrator Tim Higgins reported that changes to state and federal incentives were negatively impacting the economics of the project. He now reports that the project has been deferred because discussions about an access agreement with Minute Man National Historical Park have stalled. Focus has now shifted to planning for solar projects at Codman Farm and the Public Safety Building.

Lincoln School Building Project

Although the Lincoln School Building Project is outside our usual “24/7 Coverage of All Things Lincoln Northside,” we’re happy to provide this [link](#) for current information on the project.

Editorial Board

Steve Durante, Bob Domnitz, Maria Hylton, Jane Herlacher

Northside News is a community based newsletter designed to foster communication and advocacy for the residents of North Lincoln.

Our goal is to keep everyone in the neighborhood informed about issues that uniquely affect our part of Lincoln. Please let us know if you would like to contribute articles or join us on the Editorial Board.

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