

1985-86

Annual meeting was held on June 2, 1985

Annual Meeting June 2, 1985  
L. W. B. A.

The annual meeting of the L. W. B. A. was called to order by President, George Mitchell, at 2:10 p.m. at the Acre. 25 members, eligible to vote were present. The acting secretary read the minutes of the last meeting, November 18, 1984. Motion was made by Roy Miller, seconded by Ron LaForge to accept minutes as read. Motion passed. Dick Tanger presented the Treasurer's report. Jane Mercier made a motion to accept report, seconded by Helen Pellman. Motion passed. Tax Collector, Philip Godet, Jr. presented his annual report for 1984-1985. Report accepted unanimously.

Under old business: Pres., George Mitchell, led discussion re L. W. B. A. ownership of first beach. Motion was made and seconded to defer any further action on obtaining first beach from Mr. Amicicoli until the next annual meeting. Motion carried with 20 ayes, 3 nays, 2 abstaining. Lenny Pomerleau made a motion to contact Mr. Amicicoli to find out if he wants to post first beach as "private property." Motion was defeated by 13 nays to 12 ayes.

George Mitchell updated the membership relative to the status of the dam problem:

- ① The Supreme Court case is scheduled to be heard on Tuesday, June 11, 1985 at 10:00 A.M. in Hartford.
- ② The Gilman's have rejected the DEP offer to repair the dam at State expense.
- ③ Takeover through legislative action appears to be a dead issue this year. Senator Benson left open the possibility of rejuvenating the Bill next year.



Our request to the town of Lebanon for refund of property taxes has been denied.

New Business: The following officers and directors were elected for 1985-1986:

President - Ron La Forge

Vice-President - Jane Mercier

Secretary - Ann La Forge

Treasurer - Dick Tanager

Tax Collector - Phil Godet, Jr.

Board of Directors - 2 year:

Virginia Burns

Helen Pellman

Rose Miller was elected for 1 year on the Board to fulfill Dick Tanager's unexpired term.

The new officers and Board were sworn in.

Treasurer, Dick Tanager, presented the proposed budget for the coming year.

Assessment was set at \$100 per lot owner.

Mike Panek cast a motion to accept the assessment, Rose Miller seconded it. Carried 2/1 ayes, 3 nays.

Mike Panek asked about changing the Charter for territorial expansion. In view of the dog problem, it was decided to table the Charter change for the present.

As to a sale will be held by the Association. Details to follow. It was decided not to hold a picnic this year. Membership voted to continue with the Super Court case scheduled for June 11, 1985, and to proceed with the DEP hearings.



Nancy Viccars made a motion to adjourn and Ray Miller seconded it. Motion carried and meeting was adjourned at 4:30 p.m.

Respectfully submitted,  
 Joan B. Bondye  
 Acting Secretary, L.W.B.A.

6/9/85 Board meeting called to order at 8:15 p.m.

Present: Ron LaForge pres., Anne LaForge, Sec't, Jane Mercer, Ginger Burns, Phil Godeck, Helen Bellman, Ann Steinhilber, Dick Yanger, Rose Miller was abs.

Minutes read and accepted (with 1 minor correction on Treas. report (enclosed) motion was made by Phil Godeck seconded by Helen Bellman. Discussion - 1st beach is owed by Sarah Dmechelli, Phil Godeck will look into deeds, as it stands now we would be trespassing if we use the beach. But Dmechelli is willing to quiet <sup>claim</sup> deed to the Assoc. However by Assoc. vote 6/2 - we can't spend any money this year to survey and do the title search.

Discussion - Supreme Court case has been changed to 12:00 p.m. on 6/11/85, Atty. Cooper will represent us. After that Ron LaForge will send a thank you letter ask for final bill. (approx. \$2000 now.)

Discussion - Sen. Benson's bill (state buy & repair dam) recently failed but will be reinstated next year - we agreed to keep low profile on bill & D.E.P. or Flood board for now, to let them do their job, which they admit is theirs to do.

Discussion - Helen Bellman suggested to get a list of privately owned dams for future reference if we wanted to raise funds or to support a lobby for Benson's



bill,

Discussion - Ron read newspaper articles pertaining to Lake and listed misquotes. Also read release to Norwich Bulletin that was not printed.

Discussion - Mike Melville will be our rep. to the Flood Control Board - Ron will send letter (selectman <sup>will</sup> approve him)

Discussion - Board meetings are open to public (or observers only). Mike Melville should report to board @ each meeting, we should meet once a month (for summer at least) @ 8:00 pm @ Ron + Anne's house on 2<sup>nd</sup> Sun. of the month.

Discussion - Tag sale - Anne Steinhilber will see Joanne Oley to see if she will help.

Discussion - Cash flow, tax bills to go out 7/1 we need \$5,205.48 for our loan by 8/20/85, \$329.78 property tax by 7/1/85 and Phil Godeck needs \$100.00 (approx) for supplies (for 5 yrs worth).

Next meeting 7/14/85 @ 8:00 pm. - we should discuss 1<sup>st</sup> beach

Motion to adjourn by Zane Mercer and 2<sup>nd</sup> by Ginger Burns @ 10:20 pm.

Respectfully Submitted  
Anne M. LaFarge  
LWBA. Sec'y.



LAKE WILLIAMS BEACH ASSOCIATION  
TAX COLLECTOR  
ANNUAL REPORT  
1984 - 1985

1. Report of the Lake Williams Beach Association Tax Collector from July 1 1984 to June 30 1985.
2. The assessment for the fiscal year of 1984 - 1985 was voted on at the annual meeting of the association on June 3rd 1984. Said assessment shall be \$60.00 per property owner.
3. July 1st 1984 there were 114 property owners recorded in the association.
4. Taxes collected during the year 1984 - 85
 

	6237.50	
Back taxes collected	517.90	
Interest collected	250.88	
Lien fee collected	53.00	
Grand total collected		\$7059.28

5. Uncollected assessment

	1984	1983	1982	1981	1980	1979	1978	1977	1976
Anderson, J. & M. Lebanon, Conn	60.00	60.00	60.00	9.00					
Bukowy R. Rocky Hill Ct	60.00								
Kelly, James E. Hartford Ct	60.00	60.00	60.00						
Kendall, Emma Milo, Maine	60.00	60.00	60.00	60.00	10.00				
Lowney, J. Lebanon, Ct	60.00	60.00	60.00	60.00					
Morrison, R. & J. Lebanon, Ct	60.00	60.00	60.00	60.00	10.00	16.00	8.00	8.00	8.00
Ostranger, R. Amston, Ct	60.00	60.00	60.00	60.00					
Ostranger, M. Amston, Ct	60.00	60.00	60.00	60.00	10.00	16.00	8.00		
Volpe, A. & J. W. Hartford, Ct	60.00	60.00	60.00	60.00	10.00	16.00	8.00		
Peterson, Estate c/o Dube, Marie unknown	60.00	60.00	60.00	60.00	10.00				
	600.00	540.00	540.00	429.00	50.00	48.00	24.00	8.00	8.00
						\$2247.00	uncollected		
						225.00	Liens 18 outstanding		
						719.98	Inter. appx only 12/1/8		
uncollected appx only						\$3191.98			

6. Liens filed at Town Hall Lebanon Conn. and still outstanding for over the past eight years.
 

Anderson, J. & M.	1
Kendall, Emma	2
Lowney, J.	2
Morrison, R. & J.	5
Ostranger, R.	1
Ostranger, M.	4
Volpe, A. & J.	3

7. I have served the Lake Williams Beach Association as tax collector since July 1 1976, also have been a member of the Tax Collector Association of Conn. since 1979 and have attended all of the seminars which are held twice a year, all at my expense. Meetings of the tax association which are held during the winter months, I have missed, due to vacationing. During the course of the year there are six different types of forms to be filled out and returned to the State of Conn, Office of Policy and management.  
Lake Williams Files are being updated on each property and land for information purpose, going back to the year 1950.

*Philip U. Godeck Sr*  
Philip U. Godeck Sr  
Tax Collector L.W.B.A.

LAKE WILLIAMS BEACH ASSOCIATION  
TREASURER'S REPORT  
FOR 1984-1985

BALANCE FORWARD \$ 348.31

Income:

Tax Collector Deposits \$7,059.28  
Picnic Proceeds \$ 90.58  
Tag Sale Proceeds \$ 95.00  
Loan \$5,000.00

SUBTOTAL

\$12,244.86

Checking Balance

\$ 479.20

Disbursements:

Property Taxes \$ 329.78  
Lien Processing \$ 44.00  
Attorney Fees \$8,855.32  
Engineering Study & DEP  
Testimony \$3,142.50  
Insurance and Bonding \$ 595.00  
Officer Salaries \$ 200.00  
Audit Fees \$ 20.00  
Stationery & Postage \$ 788.06  
Finance Charges Checking \$ 9.49  
Loan & Interest \$5,205.48  
Picnic \$ 250.00

SUBTOTAL

\$19,439.63

OUTSTANDING BALANCE -\$ 6,846.46

SAVINGS \$ 348.68

*R. C. Tanger*  
R. C. Tanger  
Treasurer

12593.1



CHK #	DATE	TO	FOR	DEBITS	DEPOSITS	BALANCE
						34931
166	5 30	Balance Brought Forward				31846
167	6 12	S. Mitchell - postage, printing, supplies		2985		25756
168	6 13	Goodcopy - printing		6090		25256
169	6 13	Lebanon Town Clerk - Lien release (Mercer)		500		21856
170	6 13	Philip Goodbeck Jr - stamps, Lien release		3400		17287
171	6 16	S. Mitchell - printing		4569		46087
172	6 15	Tax Deposit			28800	43192
173	6 15	Sweeney's - stationery supplies		2895		41780
174	6 17	Joanne Aboy - Tag sale ad & supplies		1412		41659
175	6 17	Bank Service Charge - May		121		40627
176	6 23	G. Mitchell - map copies		1032		39430
177	7 3	Century Reproduction - blueprints		1197		31152
178	7 3	Goodcopy - printing		8278		247152
179	7 2	Tax Deposit			216000	118068
180	7 5	Peter Cooper - attorney fees		129084		116828
181	7 5	The Chronicle - Tax notice		1240		101828
182	7 5	Philip Goodbeck - salary FY 83-84		15000		99328
183	7 5	Nancy Mitchell - salary FY 83-84		2500		96828
184	7 5	G.H. Mitchell - salary FY 83-84		2500		95828
185	7 5	Frank Adamson - audit fee		1000		94828
186	7 5	Marge Adamson - audit fee		1000		94447
187	7 5	Bank Service Charge - June		381		91597
188	7 10	Sec. of State - 3 vol. C.T. Statutes		2850		80055
189	7 16	Tax Deposit			209188	280755
190	7 16	Nancy Mitchell - print		20000		275755
191	7 24	Franklin Hitchcock - deposit, print p.i.		5000		275542
192	7 24	Michael Melville, tax on law books		243		295042
193	7 25	Tag Sale Proceeds			9500	252064
194	7 29	Lebanon Tax Collector - property Tax		32978		47
195	8 16	SERVICE CHARGE				



DEBITS		DEBITS		BALANCE							
DATE	DESCRIPTION	AMOUNT	CHECK NO.	DATE	DESCRIPTION	AMOUNT	CHECK NO.	DATE	DESCRIPTION	AMOUNT	CHECK NO.
1				1091		70		1		3612	34
188	1	Tax Deposit						2		3605	92
189	7	S. Mitchell - envelopes		642				3		3545	92
	8	Postmaster - New Haven - stamps		6000				4		3787	92
	17	Tax Deposit						5		3788	22
	19	Convention for Pg 1 - June 24		30				6		3779	22
190	8	Philip Oley - copy of charter change		900				7		3729	46
191	13	Philbrick Booth & Spencer - blueprints - clay		4976				8		3820	04
	17	Deposit - picnic		9058				9		4260	24
	28	Tax Deposit		44020				10		4246	86
192	10	Tax Deposit						11		4226	86
	7	Sweeney's - office supplies		1338				12		4211	86
193	11	Postmaster - Hartford - stamps		2000				13		4494	66
194	12	Town Clerk - Lebanon - 3 liens		1500				14		4557	36
	11	Tax Deposit		29280				15		4930	86
	9	Tax Deposit		6270				16		3657	86
	2	Tax Deposit		22380				17		3633	69
	10	Tax Deposit						18		3616	26
195	12	M. Hatcher Norris - Attorney Fees		117300				19		3596	26
196	10	GEORGE MITCHELL STATIONARY SUPPLIES						20		3660	76
197	10	CENTURY REPRODUCTION CORP.						21		3105	76
198	10	POSTMASTER-NEW HAVEN						22		6057	76
	14	TAX DEPOSIT		6750				23		5657	76
199	12	THE MUSTARD & AGENCY, INC. (YEARLY ASSOC. COVERAGE)						24		5652	9
200	12	LENARD ENGINEERING, INC. (DAM ANALYSIS)						25		6272	9
201	10	NEW HAVEN POST MASTER GENERAL (STAMPS)						26		6254	6
	16	SERVICE CHARGE FOR CHECKING JAN 85						27		4551	7
	22	DEPOSIT OF TAXES		6200				28		4536	2
	28	SERVICE CHARGE		183				29		4530	0
202	3	GEORGE MITCHELL PHOTO ENLARGING + COPIES FOR COURT						30			
	10	SERVICE CHARGE									
	29	SERVICE CHARGE									
	24	SERVICE CHARGE									

BRUNN & PAPER  
100% WHITE  
OTHER GREEN



6/9/85 Board meeting called to order at 8:15 pm.

Present: Ron LaForge pres., Anne LaForge, Seitz, Jane Mercer, Ginger Burns, Phil Godeck, Helen Bellman, Ann Steinhilber, Dick Yanger, Rose Miller was abs.

minutes read and accepted (with 1 minor correction on Tres. report (enclosed) motion was made by Phil Godeck seconded by Helen Bellman. discussion - 1st beach is owed by Sarah Dmechelli, Phil Godeck will look into deeds, as it stands now we would be trespassing if we use the beach. But Dmechelli is willing to quit deed <sup>claim</sup> to the Assoc. However by Assoc. vote 6/2 - we can't spend any money this year to survey and do the title search.

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Respectfully Submitted  
Anne M. LaFarge  
LWBA. Sec'y.



# ASSOCIATION INFORMER

DATE: JULY 29, 1985

ISSUE # 2

PRESIDENT / PUBLIC RELATIONS  
RON LaFORGE  
642-6272

VICE PRESIDENT  
ZANE MERCIER  
642-7163

SECRETARY  
ANNE LaFORGE  
642-8272

TREASURER  
DICK TANGER  
642-8550

TAX COLLECTOR  
PHIL GODECK  
642-6292

## LAKE NEWS

RECENTLY THE FLOOD CONTROL BOARD VOTED TO ESTABLISH A TAX DISTRICT TO RAISE THE NECESSARY FUNDS TO PURCHASE AND REPAIR THE DAM. THE BOUNDRIES HAVE NOT BEEN ESTABLISHED AS YET BUT THERE IS TALK THAT IT WOULD ENCIRCLE THE LAKE ONLY. THE BOARD HAS THE POWER TO ESTABLISH A TAX DISTRICT, LEVY A TAX, BORROW MONEY, AND BUY OR TAKE THE DAM BY EMINENT DOMAIN. HOWEVER, THEY CAN'T SPEND ANY MONEY WITHOUT APPROVAL AT A TOWN MEETING. IF THEY DECIDED TO ONLY ENCIRCLE THE LAKE AND TAKE OVER THE DAM AND HAVE ONLY THE LAKE PEOPLE PAY FOR IT, OUR ONLY DEFENSE AGAINST THIS WOULD BE TO HAVE THE PLAN VOTED DOWN AT A TOWN MEETING. WHETHER WE COULD DO THIS OR NOT IS QUESTIONABLE. IF YOU PRESENTLY PAY \$1000/YR IN PROPERTY TAX TO THE TOWN, YOU COULD BE FACED WITH A TAX INCREASE OF \$500-1000 WHICH IS REDICULOUS.

RATHER THAN PUTTING ALL OUR EGGS IN ONE BASKET (HOPING WE COULD STOP THE PLAN AT THE TOWN MEETING), I HAVE COME UP WITH AN ALTERNATIVE PLAN. I HAVE TALKED TO SOME ASSOCIATION MEMBERS, TOWNS PEOPLE AT LARGE, AND SOME FLOOD BOARD MEMBERS, AND I AM FINDING STRONG SUPPORT FOR IT.

HERE'S THE PLAN: LET'S SAY THE FLOOD BOARD CHOSE TO ENCIRCLE THE LAKE AND ALSO INCLUDE THE FLOOD BASIN DOWN STREAM FROM THE DAM IN ITS NEW TAX DISTRICT. NEXT THEY WOULD LEVY A TAX OF 1 MILL (BASED ON LEBANON GRAND LIST ASSESSED PROPERTY VALUE), THEN THE ENTIRE TOWN ENCLUDING THE NEW TAX DISTRICT WERE LEVIED A TAX INCREASE OF  $\frac{1}{2}$  MILL THE TOWN COULD PROCEED TO TAKE THE DAM. THERE IS A LARGE ENOUGH PIECE OF PRIME LAKE FRONT PROPERTY AVAILABLE AT A REASONABLE PRICE. SO THE TOWN WOULD NEXT PROCEED TO PURCHASE THAT LAND AND MAKE A TOWN BEACH, BOAT LAUNCH, AND RECREATION AREA TO BE USED BY TOWNS PEOPLE ONLY.

### HERE'S SOME FACTS:

1. THE D.E.P. HAS TOLD ME THEY SUPPORT MY PLAN AND IF THE TOWN GOES ALONG AND ACTUALLY ADOPTS IT, THE D.E.P. WILL PAY 2/3 OF THE COST TO REPAIR THE DAM. FURTHER, THEY WOULD SUPPORT LEGISLATION SPONSORED BY EDITH PRAGUE, THAT WOULD ALLOW THEM TO PAY 100% OF THE REPAIR COST.
2. THE D.E.P. HAS AGREED TO APPRAISE THE DAM TO ESTABLISH FAIR MARKET VALUE (THE PRICE TO BE PAID IF TAKEN BY EMINENT DOMAIN), AN ESTIMATE, BASED ON PREVIOUS SALES OF COMPARABLE DAMS AND LAKES, A MAXIMUM OF \$1,500,000 LESS REPAIR COST. IF THIS IS CLOSE, WE COULD SEE THE DAM AND BEACH PURCHASED AND REPAIRED, (EVEN IF THE TOWN PAID 1/3 REPAIR COST) FOR \$600,000.
3. PRESENTLY TOWNS CAN BORROW MONEY @ 6% AND AT THAT RATE ANNUAL PAYMENTS ON A LOAN OF \$600,000 WOULD AMOUNT TO \$53,000/YR FOR 20 YRS. OR \$81,700/YR FOR 10 YRS.  $\frac{1}{2}$  MILL TOWN WIDE WOULD GENERATE \$40,000, AND 1MILL FOR THE NEW TAX DISTRICT WOULD GENERATE \$12,000 - \$15,000 (BASED ON 400 - 500 PROPERTIES). THE COMBINATION OF THE TWO INCREASES WOULD COVER THE COST OF A 20YR. PROGRAM. THE TOTAL ACTUAL COST PER PRDP. (BASED ON PRESENT TAX PAID OF \$1,000) FOR A 20 YR PLAN WOULD BE \$45/YR DISTRICT RESIDENTS AND \$15/YR OTHER TOWN RESIDENTS. A 10 YR PLAN WOULD BE \$53/YR DISTRICT RESIDENTS AND \$22/YR OTHER TOWN RESIDENTS.



DATE: JULY 29, 1985

# INFORMER

ISSUE# 2

PAGE 2.

THE REASON FOR THE DIFFERENCE IN TAX PAID BY US. VERSUS OTHER TOWNS PEOPLE IS THIS. ALTHOUGH ALL TOWN RESIDENTS WILL NOW BENEFIT BY BEING ABLE TO USE THE BEACH, BOAT LAUNCH, AND RECREATION AREA, PEOPLE IN THE NEW TAX DISTRICT WILL BENEFIT MORE FROM LIVING ON THE LAKE, HAVING HIGHER PROPERTY VALUES, OR HAVING BETTER FLOOD CONTROL PROTECTION. SO THEY SHOULD PAY MORE WHICH IS ONLY FAIR. BECAUSE IT'S FAIR AND NOT EXCESSIVE, THERE IS WIDE SPREAD SUPPORT BOTH ON THE LAKE AND AROUND TOWN. SO I BELIEVE IT WOULD PASS AT A TOWN MEETING AND THE 8 YEAR WAR WOULD BE OVER.

THERE IS NOT MUCH TIME. THE FLOOD BOARD MEETS NEXT WEEK. IF I DON'T INTRODUCE THIS PLAN AT THAT MEETING, THEY <sup>WILL</sup> APT TO ADOPT THE ORIGINAL PLAN WHICH WOULD BE A DISASTER. IF MY PLAN WORKS WE OUR AT LEAST MINIMIZING THE COST TO OURSELVES BY SPREADING THE COST OVER THE ENTIRE TOWN.

IF I CAN SHOW THE FLOOD BOARD AND SELECTMEN THAT MY PLAN HAS ENOUGH SUPPORT FROM LAKE PEOPLE AND TOWN PEOPLE, THEY WILL SUPPORT IT. PLEASE FILL OUT THE QUESTIONNAIRE AND RETURN IT TO ME TODAY, I HAVE TO KNOW YOUR FEELINGS IMMEDIATELY! I WILL ALSO BE POLLING TOWN PEOPLE TO GET THEIR IDEAS. I WILL BE ADVISING YOU OF AN UP COMING SPECIAL MEETING OF THE ASSOCIATION TO DISCUSS THIS ISSUE AND OTHER THINGS COMING UP.

PLEASE SEND THE QUESTIONNAIRE BACK TO ME TODAY.

THANK YOU  
RON LAFORGE





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LEAGLE CONTACT

ABOUT US

CONTACT US

View Case

Cited Cases

Citing Case

LAKE WILLIAMS BEACH ASSN. v. GILMAN BROS. CO.  
(11995)

197 Conn. 134 (1985)

**LAKE WILLIAMS BEACH ASSOCIATION ET AL.**  
v.  
**GILMAN BROTHERS COMPANY ET AL.**

Supreme Court of Connecticut.  
Argued June 11, 1985.  
Decision released August 6, 1985.

*Peter B. Cooper, with whom were Frank B. Cochran, and, on the brief, Linda Francois, for the appellants (plaintiffs).*  
*Edmund W. O'Brien, with whom was George Gilman, for the appellees (defendants).*  
PETERS, C. J., DANNEHY, CALLAHAN, MENT and M. HENNESSEY, JS.

PETERS, C. J.

The dispositive issue in this appeal is whether lowering the level of an artificial lake to compensate for the inadequate design of a dam constitutes a reasonable use of water rights. The plaintiffs, owners of real property fronting on the shore of Lake Williams in Lebanon, brought suit to enjoin the defendants, a dam owner and its lessee, from unreasonably drawing down the lake. The trial court held for the defendants and the plaintiffs appealed. We find no error.

The facts underlying this appeal are largely undisputed. The dam that created Lake Williams was erected in the mid-nineteenth century to supply water power for downstream industrial use. The dam consists of a 280 foot-long earthen embankment, into which is set a 39 foot-long stone masonry spillway. The distance between the top of the spillway and the top of the dam (the freeboard) is 1.8 feet. The level of the water in Lake Williams is controlled by opening and closing a 30 inch diameter steel pipe that runs through the spillway wall. The mechanism that operates this "gate" is located in a gatehouse atop the spillway. The named defendant, the Gilman Brothers Company (the defendant), is the successor in title to the dam site, the dam, and the right to impound and flow the waters of Lake Williams.<sup>1</sup> Gilman Brothers uses this water at its downstream plastics factory for cooling and fire protection. When surplus water is available, the defendant Bozrah Light & Power Company uses it to generate electricity pursuant to a lease agreement with the defendant Gilman Brothers.

Lake Williams is very shallow. It has a surface area of approximately 272 acres when full, yet it has a maximum depth of ten feet and an average depth of four and one-half feet. The lake was completely surrounded by undeveloped woodland until 1950, when construction of houses on lots adjacent to the lake began. The individual plaintiffs are owners of lakefront properties in this residential development. The named plaintiff is an association of development residents and holds title in its own right to two lakefront beach lots. The plaintiffs use the lake for fishing, boating, swimming and ice skating.

Before 1979, the defendant kept the lake as full as possible in the summer to ensure an adequate reserve of water for its factory, and the parties' uses of the lake were compatible. The level of the lake was relatively stable from March through Labor Day, after which it was normal for the water to be drawn down approximately one foot.

In 1976, as part of the United States army corps of engineers national dam inspection program, the engineering firm of C.E. Maguire, Inc., inspected the dam at Lake Williams. In its October, 1978 report, Maguire stated that the dam could not withstand the prescribed flood test because its spillway capacity was seriously inadequate. The report concluded that a test flood would overtop the dam by 2.31 feet, and recommended that Gilman Brothers engage an engineer experienced in the design of earth dams to make a detailed study of the dam and institute corrective measures. In the interim, the defendant was told that the lake "should be lowered and maintained at a level below the spillway crest to provide flood storage for storm events."<sup>2</sup> An accompanying table showed that 4.11 feet of freeboard would be necessary to pass the test flood. The department of environmental protection (DEP), which has jurisdiction over dams pursuant to General Statutes §§ 22a-401 through 22a-410, requested the defendant to implement these recommendations by January 1, 1980.

Accordingly, Gilman Brothers hired the engineering firm of Buck & Buck to study the dam. In its interim February, 1980 report, Buck & Buck confirmed that the spillway capacity was inadequate. Buck & Buck issued its final report on March 5, 1982. It recommended lowering the level of the spillway by three feet, which would increase the available freeboard to 4.8 feet at an approximate cost of \$25,500. Alternate remedies of lengthening the spillway or adding an emergency spillway were discussed and rejected. The defendant was also told to keep the level of the lake approximately three feet below the spillway until the spillway itself was lowered.

On May 17, 1982, the DEP determined that the dam could not be classified as safe and ordered the defendant to repair or remove it. See General Statutes § 22a-402.2 The DEP order provided in pertinent part: "The repairs or alterations to be made should include... 1. Provide spillway capacity adequate to discharge [the test flood] without overtopping the embankments." The DEP did not specify how its order should be implemented.<sup>3</sup>

In July, 1979, the lake was drawn down to three and one-half feet below the spillway, three feet below its normal summertime level. In order to facilitate Buck & Buck's inspection of the dam, the lake was almost completely drained in April, 1980. Between April, 1980, and March, 1982, the level of the lake fluctuated widely. Since the latter date, the lake has, with one notable exception, been maintained at approximately three feet below the top of the spillway. During a major rainstorm in June, 1982, the level of the lake rose from twenty-nine inches below the spillway to six inches above the spillway before cresting.



Since July, 1979, there has often been insufficient water in the lake for the recreational activities previously enjoyed by the plaintiffs. Large expanses of mud have been exposed, weed growth in the lake has increased and the market value of the plaintiffs' property has significantly declined.

The plaintiffs filed suit on September 8, 1981. The first count of their complaint alleged that by drawing down the lake, the defendants violated the plaintiffs' common law riparian rights. The second count claimed an impairment of the public trust in the waters of the lake. See General Statutes §§ 22a-15, 22a-16.4

The trial court ruled against the plaintiffs on both counts. It found that while the plaintiffs owned land abutting the lake, they had failed to allege or prove ownership of any portion of the lake bed.<sup>5</sup> The court therefore concluded, on the first count, that the plaintiffs had no riparian rights in the waters of Lake Williams. The trial court held that recovery under the second count was barred by the necessity of maintaining the lake at the lower level. On appeal, the plaintiffs claim that the trial court erred in holding that they have no riparian rights and in finding that the lake was drawn down out of necessity.

The plaintiffs' claims are defeated by the factual findings of the trial court. Even if it is assumed, arguendo, that the plaintiffs are riparian owners, they cannot prevail on the first count of their complaint. It is settled law that "[e]ach riparian owner is limited to a reasonable use of the waters, with due regard to the rights and necessities of other such owners." *Harvey Realty Co. v. Wallingford*, 111 Conn. 352, 359, 150 A. 60 (1930); see *Agawam Canal Co. v. Edwards*, 36 Conn. 476, 497-98 (1870); *Wadsworth v. Tillotson*, 15 Conn. 366, 373, 39 A.D. 391 (1843); see generally 7 Clark, *Waters and Water Rights* (1976) § 611; 4 Restatement (Second), *Torts* §§ 850, 850A (1977). In balancing competing claims to the waters of an artificial lake, we have held that riparian owners may prevent only the unreasonable lowering of the lake by a dam owner. *Labbadia v. Bailey*, 152 Conn. 187, 190, 194, 205 A.2d 377 (1964); *DeWitt v. Bissell*, 77 Conn. 530, 535, 60 A. 113 (1905); see also *Brown v. Ellingson*, 224 So.2d 391, 393-94 (Fla. App. 1969); *Taft v. Bridgeton Worsted Co.*, 237 Mass. 385, 388-90, 130 N.E. 48 (1921); *Stidham v. Algonquin Lake Community Assn.*, 133 Mich.App. 94, 97-99, 348 N.W.2d 46 (1984); 7 Clark, *Water and Water Rights* (1976) §§ 615.2, 633. Whether a competing use is reasonable is a question of fact that depends on the specific circumstances of each case. *Hazard Powder Co. v. Somersville Mfg. Co.*, 78 Conn. 171, 177, 61 A. 519 (1905); *Mason v. Hoyle*, 56 Conn. 255, 262, 264, 14 A. 786 (1888).

The factual record developed in this case compels the conclusion that the defendants' reduction of the level of Lake Williams is reasonable. Two engineering firms independently recommended the reduction and the trial court specifically found those recommendations to be warranted, especially in light of the rapid rise of the lake during the June, 1982 storm to within inches of overtopping the dam. The trial court further found that the defendants are maintaining the lower level because of the engineers' recommendations. While the plaintiffs have attacked these findings, they have not shown them to be clearly erroneous in light of the evidence adduced at trial. See *Pandolphe's Auto Parts, Inc. v. Manchester*, 181 Conn. 217, 221-22, 435 A.2d 24 (1980). In sum, even if the plaintiffs have common law rights in the waters of Lake Williams, those rights were not violated by the defendants' reasonable exercise of their own riparian interests.

The plaintiffs' contention that the trial court erred in finding no impairment of the public trust in the lake is likewise refuted by the trial court's findings of fact. It is an affirmative defense to a charge of impairment that, "considering all relevant surrounding circumstances and factors, there is no feasible and prudent alternative to the defendant's conduct and that such conduct is consistent with the reasonable requirements of the public health, safety and welfare." General Statutes § 22a-17. Although the defendants did not specially plead this defense; see *Manchester Environmental Coalition v. Stockton*, 184 Conn. 51, 63, 441 A.2d 68 (1981); the evidence relating to this issue was admitted without objection and the defect in pleading is therefore deemed to have been waived. *Damora v. Christ-Janer*, 184 Conn. 109, 112, 441 A.2d 61 (1981); *Royal Homes, Inc. v. Delene Hardwood Flooring Co.*, 151 Conn. 463, 466, 199 A.2d 698 (1964). The trial court explicitly held that the affirmative defense had been proved, and this conclusion is amply supported by the record.

It is unfortunate that the plaintiffs, through no fault of their own, must suffer because of outdated nineteenth century engineering. The defendants, however, are equally blameless for the current state of affairs. The plaintiffs must seek a remedy elsewhere.

There is no error.

In this opinion the other judges concurred.

#### FOOTNOTES

1. Lawrence Gilman, president of the Gilman Brothers Company, was also sued individually.

2. General Statutes § 22a-402 provides in relevant part that the commissioner of the department of environmental protection "shall investigate and inspect or cause to be investigated and inspected all dams or other structures which, in his judgment, would, by breaking away, cause loss of life or property damage.... If, after any inspection described herein, the commissioner finds any such structure to be in an unsafe condition, he shall order the person, firm or corporation owning or having control thereof to place it in a safe condition or to remove it...."

3. Proceedings are now pending before the DEP on the defendants' application for a permit to remove the dam. See General Statutes § 22a-403. The plaintiffs are represented at these proceedings. See General Statutes § 22a-408.

4. "[General Statutes] Sec. 22a-15. DECLARATION OF POLICY. It is hereby found and declared that there is a public trust in the air, water and other natural resources of the state of Connecticut and that each person is entitled to the protection, preservation and enhancement of the same. It is further found and declared that it is in the public interest to provide all persons with an adequate remedy to protect the air, water and other natural resources from unreasonable pollution, impairment or destruction." "[General Statutes] Sec. 22a-16. ACTION FOR DECLARATORY AND EQUITABLE RELIEF AGAINST UNREASONABLE POLLUTION. The attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may maintain an action in the superior court for the judicial district wherein the defendant is located, resides or conducts business, except that where the state is the defendant, such action shall be brought in the judicial district of Hartford-New Britain, for declaratory and equitable relief against the state, any political subdivision thereof, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity, acting alone, or in combination with others, for the protection of the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction."

5. The trial court issued its memorandum of decision on December 29, 1982. On January 5, 1983, the plaintiffs filed a motion for a new trial, seeking to introduce additional evidence on the issue of whether they owned land beneath the lake. The motion was denied and the plaintiffs included this denial as a claim of error on appeal. Our disposition of the plaintiffs' other contentions obviates any need to address this issue.



(1).

At our annual meeting of the Association on June 2nd, 1985 the membership voted that we should finish our two legal cases (Supreme Court and D.E.P. hearing) and cease any further legal action and expense. The Supreme Court did hear our case, June 11, 1985, and we have notified Atty. Cooper to send us his final bill. The D.E.P. brief will be filed July 31, 1985 and shortly after that we will notify Atty. Norris to do the same.

We do not plan any further legal action and our strategy now is as follows:

- (1). Await the Supreme Court decision- we will notify you as soon as they come to a decision.
- (2). Re-establish lines of communication with the Gilmans- which we have already done.
- (3). Continue to support the efforts of the Lebanon Flood and Erosion Control Board and the State D.E.P. but maintain a low political profile- we have caused the D.E.P. and the Flood Board to admit it is their job to save the lake- now we should quietly stay out of the way and let them do their job.
- (4). Support Sen. Benson's bill- when the appropriate time comes- to do much in this direction now could undermine the efforts of the D.E.P..

We believe the above strategy is the most effective course for us to follow at this time and it cost nothing except our time which we gladly donate. We feel this plan coupled with your financial support will allow us to pay off all Association debts this year so taxes can be reduced next year. If the situation changes and we feel another course should be considered which will involve any expense we certainly will go through the process outlined in our charter and by-laws to call a meeting of the entire Association to have you decide the matter.

Now, more than ever, it's very important that we all come together and resolve any internal differences we may have. Together we represent a powerful political force, divided into factions that power is dis- apated. Financially, we need everyones support if we are to meet and pay off our bills this year. Without your support we can not exist.

It is equally important that you know your tax dollars will not be spent without your approval at a special or annual meeting that every member will be notified of according to our charter and by-laws. It's important that you know we will do our very best to keep you informed of all developments regarding the lake and board of directors meetings. There will be frequent bulletines on the board at first beach and from time to time news letters such as this will be mailed out to every member. You should know your opinions are important and your suggestions are welcome and will recieve respectful consideration, and you should know together we can resolve the lake problem and get back to being the community we were years ago. But remember the key word is "TOGETHER" without you we are nothing.



For those of you who have not had a chance to read the Bulletin board, let me bring you up to date on developments since June 2nd 1985.

June 9, 1985- New board of directors met- developed strategy on lake issue (outlined earlier). We decided to meet on the second Sunday of every month at 8:00 pm. at Ren and Anne LaFerge's house. Meetings are open to the public. (Because of limited space please call Ren or Anne, at 642-6272 if you plan to attend).

Mike Melville was appointed to represent us on the Flood and Erosion Control Board. (We have been told he will be approved by the Board of Selectmen). We agreed to send Atty. Cooper a letter thanking him for his services, and asking him to close our case and send his final bill.

June 11, 1985- The Supreme Court did hear our case (Riparian rights)- there is no way of knowing which way the decision will go, but we gave it our best shot. As soon as a decision is made we will let you know.

June 12, 1985- The Flood and Erosion Control Board met with Stanley Pac, Mr. Pac once again promised the lake would be full for the summer.

June 13, 1985- I met with the Gilmans. They told me:

- (1). The only way to preserve the lake was for us or the State to buy the dam. They said we should support Sen. Benson's bill (which was defeated this year-but will be reintroduced 2/86).
- (2). They will not consider leasing the dam ( which would allow the State to pay for repairs).
- (3). They had started to draw down the lake by 3ft. to limit their liabilities, should the dam fail.
- (4). They promised to close the dam when the 3ft. level is reached.

June 14, 1985- Stanley Pac gave Mr. Gilman a restraining order (not to go below 3ft.) and is presently looking to see what can be done to force him to close it sooner.

June 15, 1985- I met with Larry Gilman at his home. He showed me the order from Stanley Pac and again said Benson's bill was the only solution.



Your new officers are:

President: Ren LaFerge 242 Lake Shore Dr., Lebanon 642-6272

Vice President: Zane Mercier Lake Shore Dr., Lebanon 642-7163

Treasurer: Dick Tanger Lake Shore Dr., Lebanon 642-6550

Secretary: Anne LaFerge 242 Lake Shore Dr., Lebanon 642-6272

Tax Collector/ Constable:

Philip Gedeck Lake Shore Dr., Lebanon 642-6292

1 year Directors:

Rose Miller Lake Shore Dr., Lebanon 642-7141

Ann Steinhilber 200 Lake Shore Dr., Lebanon 642-7314

2 year Directors:

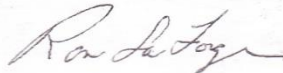
Helen Pellman P.O. Box 109, Thornwood, N.Y.  
1-914-769-0155

Virginia (Ginger) Burns 167 Lake Shore Dr., Lebanon  
642-7827

Up till now this news letter may leave you thinking we are preoccupied with the lake issue only. That would be understandable but it's not true. I think it's important to remember why our Association was formed originally: To improve roads, lighting, safety for our children, recreation for all our members and to establish a feeling of family among our neighbors. You may not hear too much about these things now that the lake itself is an issue known all around the State, but lets not forget!

Our beaches and boat launch are in disrepair, the acre is overgrown and looks like Woodstock, 1968 after the concert and some of our neighbors are being forced out of their homes by the town's newly re-born seasonal zoning. We have not forgotten and we are looking at what we can do to help resolve these problems too.

The last thought I'd like to leave you with is we on the board are here to serve you. How ever we can't do that unless you let us know how you feel about many issues we now must deal with. Please call us, talk to us, talk to each other and please come to all special and annual meetings to cast your vote. Recently in Marlborough a very important issue on Resident Troopers was decided by one vote- so you can see your vote is important and could be the one to decide the issue.



Ren LaFerge, Pres., L.W.B.A.



Board meeting of 7/14/85 8:10 pm.

All members present 1 member abs. Zane  
Mercer. Guests Ray Kanter, Mill Melville  
mins. of last meeting read and accepted  
1<sup>st</sup> motion by Dick Tanger and 2<sup>nd</sup> by Anne  
Steinhilber.

First on agenda Ray Kanter - discussed  
possibility of petition to have town take

has talked to Harold Leibman about land  
for a town beach - no figures mentioned,  
but he is willing to consider selling  
(Ray will get a figure @ location etc.) Response  
favorable from board - (no vote taken)

Ron discussed plans to get town wide  
support - Ron sighted possible objection  
from Ed Clark (opposed to town take over)

Campanelli's want to acquire our road  
at 1<sup>st</sup> beach - to have contiguous property  
(for year round occupancy)

discussion Helen Pellman's concern for  
right of ways.

Phil Godeck's concern for future  
expansion of Assoc. Board agreed to consider  
and decide on action at later date

Tax collection report \$3500 Collected so  
far.

Tues. report - owed \$329 (town taxes)  
5<sup>25</sup> 4<sup>48</sup> (loan due 8/21) approx. \$1800 (Cooper  
supreme court case.) \$68 (Norris, D.E.P.) no  
report on log sale yet. Recently we have  
in checking account \$3800.

By unanimous vote of board -  
authorized payment of 1/2 the taxes  
(remainder in Jan; '86) Hold all other debts  
until loan is paid (w exception of  
back pay for Nancy Mitchell (if not already  
paid - Dick Tanger will check on it.) and Phil  
Godeck - Dick Tanger will wait for his pay  
until after loan Dick @ pay Nancy + Phil  
Ron - Norris will be asked for final bill  
2 wks after Miller decides appearance  
period.

adjourned 10:25 pm. St Dick Tanger 2<sup>nd</sup> by  
Griser Burns



Miss special meeting 7/28/85  
Brought to order at 8:00 pm, all  
members present.  
mins-waived.

Ron discussion on 2 tier tax plan  
which incl's beach - location outside  
assoc. - but too sensitive to disclose  
exact location. Ron read newsletter  
questions to go to assoc. a.s.p. by  
unanimous vote of board - support  
plan.

Phil Godeck & Rose Miller - we have the  
deed for road @ 1st beach add enough  
info to get quick claim deep proposed.  
Vote of board unanimous.

① spend 100. to have Novia associate  
prepare quick claim - unanimous approval  
Phil will mail it to Omecelli who will  
sign then Phil will get recorded. (\$200 max  
by charter)

Vote of board unanimous on these  
matters:

① in the Campanelli request to acquire  
road @ 1st beach the board position  
is - we would ~~record~~ <sup>record</sup> to the assoc. @  
special meeting that assoc. agrees  
to sell for \$500 + legal costs only the  
~~portion~~ portion of road in front of  
Campanelli's house but not to actually  
sell unless town committed themselves  
to giving year round status to the  
Campanelli's prior to sale - Ron will be



in touch w/ Campanelli if interested  
would be willing to bring it to the  
assoc.

Discussion - Phil Hodeck has collected  
approx \$6500 to date and although  
we could pay loan now we will  
wait until due date - before paying  
the first 1/2 of property taxes has  
been paid.

meeting adjourned 9:37 1st by  
Ann Steinhilber 2nd by Rose Miller

Respectfully  
Submitted,  
Anne LaForge