



*Town of New Fairfield*  
*Selectmen's Office*  
*4 Brush Hill Road*  
*New Fairfield, Connecticut*

**BOARD OF SELECTMEN**  
**REGULAR MEETING**  
**THURSDAY, FEBRUARY 14, 2019**  
**7:30 P.M.**  
**COMMUNITY ROOM @ 33 ROUTE 37**  
**AGENDA**

1. Call to Order
2. Pledge of Allegiance
3. Public Comment & Participation
4. Correspondence & Announcements
5. Approve Minutes of Board of Selectmen Regular Meeting on January 24, 2019
6. Budget Transfers
7. Personnel Report
8. Appointments

**New Business**

9. Discuss and possibly vote on Board of Selectmen 2019/2020 Budget
10. Discuss and possibly vote to accept comments on Candlewood Lake Shoreline Management Plan

**Old Business**

11. Boat Dock Replacement Update
12. Public Comment
13. Adjournment

**FEB 13 2019**

Received for Record \_\_\_\_\_

at 9:51 AM and recorded by

*Pamela J. Dohan*  
Pamela J. Dohan, Town Clerk, New Fairfield, CT



TOWN OF NEW FAIRFIELD  
PERSONNEL REPORT  
February 14, 2019

LAST NAME	FIRST NAME	POSITION	LOCATION	PAY RATE	REASON	EFFECTIVE
NEW HIRES						
CHANGE IN STATUS						
1 FARINHA	LINDA	FINANCE ASSISTANT	FINANCE	\$2,500 STIPEND	ASSITING WITH TREASURER DUTIES AND TRANSITION	2/1/19
SEPARATION						

February 15, 2019

John Howard  
Director of Connecticut Operations  
FirstLight Power Resources  
P.O. Box 5002  
New Milford, CT 06776

Dear Mr. Howard:

We hereby submit comments of the Town of New Fairfield, CT on the Shoreline Management Plan v.1.0 made available in December. We view the Shoreline Management Plan as a critical component to protect the quality of Candlewood Lake for use by its residents as well as protecting the right of residents who own property on or near the Lake.

New Fairfield is one of five municipalities bordering Candlewood Lake and Squantz Pond and, in fact, has more shoreline than any other municipality. The Town has a park with a beach and over 100 docks on Candlewood Lake. That property is used extensively by residents for swimming, canoeing, kayaking, boating, concerts and other outdoor events, and other recreational opportunities. We have approximately 600 parcels of land owned by New Fairfield resident directly on Candlewood Lake or Squantz Pond. Additional several hundred live in lakeside communities that have beaches and docks on the lake. Many of these residents who live on the lake have deeded rights to land that extends out into the lake dating back to the formation of Candlewood Lake in the 1930s.

Homes on Candlewood Lake have higher property assessments than other homes. Additionally, we have businesses in New Fairfield that depend for their livelihood on people who visit the lake, including a large commercial marina, boat repair services, sports fishing enterprises, beverage shops, delis and restaurants, and a gas station.

All of which is to say that New Fairfield, both as a town and on behalf of its residents, has a large vested interest in the continuing health and vitality of Candlewood Lake, as well as an interest in protecting the rights of its lakeside residents. If the quality of the Lake were to be degraded, it could have a negative impact on the financial viability of the town as well as on our commercial enterprises. Likewise, the property rights of New Fairfield's lakeside residents (including those on Squantz Pond) would be infringed, if FirstLight were to take arbitrary action to impose unjustified fees.

Candlewood Lake faces a number of serious challenges. These include:

- Proliferation of Eurasian milfoil that chokes swimming and boating areas
- Increased incidence of cyanobacteria in blue green algae blooms
- The threat of zebra mussels.

The communities around the lake have taken action to address these threats, spearheaded by the Candlewood Lake Authority (CLA). There are indications that some progress is being made

in slowing the advancement of some of these threats. However, with increasing pressure from global climate change and increased usage of the Lake, continued vigilance and pro-active measures to protect the Lake are required.

From this perspective, we are disappointed in the draft Shoreline Management Plan issued in December, 2018 and have a number of concerns with it. While the version currently in effect can certainly be improved, it at least gives proper attention to protecting the unique natural resource that Candlewood Lake is and defines the rights of towns and residents around the Lake. The proposal now under review has been so fundamentally restructured, that it is difficult to understand all the ramifications. But, it appears that the guiding principle in the rewritten proposal is to downplay its responsibilities to manage the Lake and protect it and the rights of residents and towns around it while increasing the flexibility of FirstLight to run its operations with less regard to those rights.

The important business of protecting Candlewood Lake requires the active support and participation of the owner of the Lake. We urge FirstLight to restore balance to the Shoreline Management Plan so that it both allows FirstLight to run its power generating operations while also protecting Candlewood Lake. We request that you take the following comments into account in modifying the proposal.

**1. The Town of New Fairfield would like to see a more cooperative partnership with FirstLight, the other four surrounding towns and CLA than what is proposed in the SMP.**

Because the Lake is so central to the wellbeing of New Fairfield and the other surrounding towns, we expect to be involved as partners in managing the issues that are critical to us. We are disappointed that the proposed SMP minimizes avenues for our input and that of the public generally. For example, FirstLight states that the next revision of the SMP will be in ten years, despite FERC guidance that revisions should take place every five years and FERC license conditions that specify six years. Given how critical the issues are facing Candlewood Lake, we believe the 5-yr period is the appropriate period for the next revision.

Likewise, FirstLight seems to limit communication with Stakeholders to once every ten years, prior to revision of the SMP. We would like to see at least an annual meeting of stakeholders with FirstLight to provide a formal avenue to discuss the challenges facing the Lake and how they can best be jointly managed. This would also provide FirstLight the opportunity to educate the stakeholders and public at large as to the challenges faced by FirstLight in its power generation operations. More frequent communication would help alleviate some of the contention that has characterized relationships between FirstLight and the public in recent years, especially concerning water quality issues.

Additionally, we would request that FirstLight be more open with the Town of New Fairfield, CLA, and the other surrounding towns concerning the data it gathers – or is required to gather. Data and images from flyovers, GIS data, boat counts, and sampling, and analysis should be readily available to the five surrounding towns. We believe, for example, that

FirstLight has been taking water samples and analyzing them. This information should be routinely shared with interested towns and the CLA.

For these reasons, we object to the unilateral assertion in Section XIV that “FirstLight does not have any obligation to release any...company information to the public. Information concerning the quality and state of the Lake as well as action taken by FirstLight to enforce its requirements should not be considered as “company information” and should be routinely available to the public. It is difficult to understand what privacy concerns there might be to justify not sharing such information. Similarly, concerns about proprietary software, if they exist, should be fairly easy to remedy. Likewise, information on compliance with buffer garden requirements should be available. We do not understand what privacy concerns justify not releasing this information -- nor why it is not possible to put such information and data in a non-proprietary database. Lack of availability of such data means FirstLight is unaccountable to anyone in measuring progress of the buffer garden program.

We would appreciate the opportunity to work more openly and cooperatively with FirstLight in our shared responsibility to manage the Lake as a natural resource and protect the health and safety of our residents.

- 2. The Town of New Fairfield requests that First Light clarify its responsibilities vis-à-vis municipalities for activities below the 440 line.** Court cases have clearly stated that the owner of the Lake has responsibility for all activity – regulatory and otherwise – below the 440 line. The current proposal does not clearly indicate that this is the case and in fact tries to shift responsibility for some matters, i.e. derelict docks that are below the 440 line, away from itself. The SMP should clearly state that it has exclusive jurisdiction for all matters below the 440 line unless such jurisdiction has been delegated *and accepted* by another entity, such as a municipality or CLA. For the record, New Fairfield did not consent to the delegation of authority for regulating building, zoning, wetlands protection, or any other matter as part of the current SMP and will not do so for this version. We are satisfied with the current working relationship for FirstLight review proposed actions by New Fairfield residents below the 440 line. We are willing to work cooperatively with FirstLight on issues that affect New Fairfield residents, but would like clarification that we are not legally obligated to do so.
  
- 3. The Town of New Fairfield does not object to the fees proposed by FirstLight for permit, application, and review fees as laid out in Appendix D, but believes any changes should be subject to notice and comment.** We do object, however, to the broad language of Section XI that would give First Light virtually unfettered discretion to change the fees in Appendix D or to “impose additional fees not specified herein.” This is an invitation to abuse. Any change in the proposed fees must be based on provable changes in requirements or costs and subject to notice and comment. Otherwise, FirstLight can arbitrarily change them without accountability. Furthermore, we would like FirstLight to confirm that they have no intention of imposing administrative/registration fees on those who live on the lake absent

some sort of activity that triggers a review requirement by FirstLight. There is no legal basis for such fees, especially because many of our lakeside residents have deed rights extending into the Lake.

We would also like to understand the practical meaning of the second paragraph in Section XI concerning recovery of costs “from abutting Property Owners, entities with Deeded Rights, municipalities or others related to their non-commercial residential use and occupancy of lands and waters within the Project Boundary.” This appears to be a fairly broad statement of right of recovery, but it is difficult to understand what First Light has in mind. If a municipality raises a property tax assessment, for example, does that entitle FirstLight to somehow recover those costs from abutting landowners?

- 4. FirstLight should make protecting natural resources and water quality a co-equal requirement of the Shoreline Management Plan.** FirstLight denies responsibility in Section VII for protecting water quality, without any basis. Likewise, protection of natural resources or water quality is not listed as a co-equal requirement for “Authorization of Shoreline Land Uses Within the Project Boundary” as laid out in II in Appendix C. FERC, however, is clear that protection of environmental values, including water quality, is part of its mandate: “Included in the Commission’s regulatory mandate are specific requirements for protecting non-power resources, including fish and wildlife habitat, irrigation, water supply, recreation, flood control, and water quality.” (Guidance for Shoreline Management Planning at Hydropower Projects, FERC, 2012) By extension, this is also part of FirstLight’s mandate.

This attempt to deny responsibility is characteristic of the way FirstLight has administered its responsibilities on Candlewood Lake. Instead of proactively joining the towns and CLA in defining the water quality problems and finding solutions, FirstLight employs consultants who have disputed data showing the problems and who have supported solutions that involve the use of chemicals opposed by the overwhelming majority of interested residents in New Fairfield. FirstLight also replaced a respected scientist with this consultant in what many see as an effort to downplay the milfoil issue on the Lake.

We respectfully request that FirstLight recognize its responsibility to protect natural resources and water quality throughout the Plan and commit to working cooperatively with the five towns and CLA to address them.

- 5. Buffer Gardens continue to be an important protection.** The Town of New Fairfield continues to support the requirement for installation of buffer gardens for properties along the shoreline. We believe this program is an important component of managing runoff into the Lake. Because these areas fall below the 440 line, FirstLight is responsible for administering the program. We would like to understand the progress FirstLight has made in carrying out this responsibility and what changes may be necessary. Since the Buffer garden program began in 2013, the five-year deadline for properties required to install buffer gardens is being hit. We believe FirstLight has information on what properties may

be in compliance, but have heard that it is not being shared out of concern for privacy. We would like to see the legal opinion that says this information must remain confidential.

Additionally, we request clarification of the following definition in Appendix B:

"Vegetated Riparian Buffer" is an area within the Vegetated Riparian Buffer Zone comprised of native vegetation created either through natural succession (i.e. stop mowing grass) or the planting of native trees, shrubs and herbaceous or ground covers that occupy between 5% and 50% of the Vegetated Buffer Zone. "

A 5% buffer zone is reasonable for a very small yard bordering Squantz Pond, for example, since a larger buffer zone may constitute a "taking." Five percent is not reasonable for a larger lot. We suggest adding language that clarifies that the size of the buffer zone will be dependent on the size of the lot overall, with 5% being the exception rather than the rule.

Likewise, we urge some accountability in the following circumstance, laid out in the section on Vegetative Riparian Buffers:

"Any requirement to install vegetated buffers may be waived at the discretion of FirstLight if the installation of such buffers is not reasonably practicable, feasible and or violates applicable law. "

If FirstLight contemplates waiving the buffer zone requirement, we request that the Town in which the property is located be notified and given a chance to comment.

**6. New Fairfield would like to work with FirstLight to better manage stormwater discharges.**

While we appreciate the statements in the proposed SMP concerning new sources of stormwater discharges, existing stormwater discharges may be a contributing factor to runoff of nutrients and salts into the Lake. New Fairfield and other towns around the Lake will start working on these issues in the near future. We would like to propose a joint program to map outfalls and put together a sampling plan with potential mitigation measures. We believe this is a shared responsibility to address water quality issues in the Lake.

**7. New Fairfield requests clarification of the provisions concerning existing septic systems.**

In the discussion of existing septic systems in Section IV, the following sentence seems internally contradictory to the rest of that paragraph: "FirstLight will not grant property easements to allow septic systems within the Project Boundary." Previous sentences in that section state that FirstLight will allow repair or replacement of existing septic systems under certain conditions. Those repairs or replacements cannot be permitted if FirstLight does not grant an easement. Please clarify the intent of this sentence.

**8. The Town of New Fairfield endorses and Incorporates by reference the comments of the Candlewood Lake Authority.** Because there are five municipalities that border the Lake, no



one town can adequately address issues on the Lake by itself. CLA represents the interests of all five municipalities that border Candlewood Lake, has been deeply involved in addressing the many challenges affecting the Lake, and has developed expertise that the Towns rely on. For this reason, we endorse the comments submitted to FirstLight by CLA on January 31, 2019.