

# **PENFIELD PAVILION**

March 13<sup>th</sup> Board of Finance Meeting

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# Penfield Building History (2006-2021)

- **Fall 2006** – Town wide discussions began regarding rebuilding the original Penfield Pavilion.
- **Summer 2011** - A new Penfield Pavilion was completed, costing the Town nearly \$5 million.
- **October 2012** – Penfield Pavilion was severely damaged during Hurricane Sandy.
- **December 2015** - FEMA determined the Town would be eligible for \$4.3 million in reimbursement towards reconstruction of the Pavilion based on an approved project scope of work (SOW).
- **February 2016** - Construction started on rebuilding the Pavilion with a scope of work that was different than what FEMA originally approved.
- **August 2016** – FEMA sent written notice that the revised scope of work may not comply with local and NFIP regulations and commencing the revised SOW without FEMA approval violates the reimbursement conditions. *Construction continued despite FEMA's notice.*
- **March 2017** – 4.5 years after Hurricane Sandy damage, Penfield Pavilion is reconstructed costing \$7.3 million, and reopens.
- **November 2018** – FEMA confirmed the Town is ineligible for reimbursement and reconfirmed the Town's noncompliance with floodplain management requirements.
- **January 2019** – The town submitted its first appeal to FEMA's decision.
- **June 2019** – FEMA denied the town's appeal.
- **August 2019** – The Town submitted its second appeal to FEMA's decision.
- **March 2021** – FEMA notified the State the second appeal was denied.
- **June 2021** – The Town was notified that FEMA denied the Town's second appeal, and notified for the first time the NOV would be reinstated.
- **July 2021** – My administration begins discussions with the FEMA on options to address the NOV.

# Penfield NOV Timeline (2021-2023)

- **June to October 2021** – Negotiations begin to review and identify the scope of the NOV with FEMA. Town engages professional consultants to develop conceptual options for review. Discussions with LEP to determine potential remediation plans for “Julian Fill”.
- **February to May 2022** – Developed detailed conceptual plans to respond to the NOV. Letter sent to FEMA outlining options for compliance.
- **August 2022**
  - RFQs are issued for construction manager, architect, and structural, geotechnical & coastal engineers.
  - Town Hall Meeting held for elected officials. Administration proposes plan to finance all aspects of “Julian Fill” remediation and Penfield NOV compliance.
- **September 2022** –
  - FSW email to all town boards with follow up information requested at the 8/31 meeting.
  - RFQ Interviews for construction manager and A&E services.

- **October 2022** – CFO presents all town boards with proposal to fund remediation and Penfield NOV.
- **November 2022** –
  - Schematics and site plans sent to FEMA.
  - Letter to FEMA with questions from elected officials. Elected officials requested documentation in writing from FEMA before voting.
- **January 2023**
  - FEMA responds to schematics with comments.
  - Administration contacted Congressman Himes office to assist in FEMA attendance at Town Hall meeting.
- **Feb 10, 2023** – Conference call with FEMA to discuss Town hall meeting, FEMA notified the Town for the first time of the downgrade of flood insurance deadline of March 31<sup>st</sup>.
- **Feb 20, 2023** – Zoom meeting with FEMA and administration to update Congressman Himes and State Delegation.
- **February 27, 2023** – CRS Retrograde letter received from FEMA.

# WHY ARE WE HERE?

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1. Contaminated “Julian Fill” from the fill pile was illegally deposited beneath Penfield Pavilion during construction. The Town is required to remove it pursuant to state and federal law.
2. FEMA has determined the Town installed horizontal grade beams at a height that is in violation of federal floodplain management regulations. Under federal law, the Town is required to bring Penfield Pavilion into compliance.

As a result, the Town has received Notices of Violation from federal and state agencies that must be addressed.

# WHERE ARE WE?

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If the Town does not approve a plan for corrective action by the end of March regarding the Notice of Violation at Penfield Pavilion, we face a myriad of negative consequences that will impact residents and the Town.

# WHAT MUST THE TOWN DO?

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*Adopt a plan to address:*

- 1. The grade beam Notice of Violation (NOV) from FEMA regarding Penfield Pavilion and;*
- 2. The Consent Order with the CT Department of Energy & Environmental Protection and the Environmental Protection Agency for the contaminated soil (“Julian Fill”) beneath the building.*

**FEMA NOV:** Fix the main building structure (excluding the locker room portion) to bring it in compliance by lowering the elevation of the grade beams. The alternative to comply is knocking down the main building structure and removing the grade beams.

**DEEP/EPA:** Remove all “Julian Fill” (contaminated fill from the fill pile) under the building in accordance with the remedial action plan submitted to DEEP and the US Environmental Protection Agency.

# WHAT HAPPENS IF WE DON'T COMPLY?

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The Town is a member of FEMA's Community Rating System (CRS) which awards communities that go above and beyond the minimum standards of the National Flood Insurance Program (NFIP). As a class 8 CRS community, all flood insurance policyholders, including policies for town-owned buildings, in the special flood hazard area (1,794 policies) receive a 10% flood insurance premium discount.

FEMA has initiated steps to downgrade the Town's CRS status, the result of which would eliminate the discount. The date of what FEMA describes as the "point of no return" for the downgrade is not final but could be as early as March 31<sup>st</sup>, meaning that if the Town has not demonstrated significant progress toward remediating the violation, (funding an approved plan), then notification to insurance companies would ensue, and the downgrade would ultimately take effect for new flood insurance policies written or existing policies renewed after October 1<sup>st</sup>.

Continued non-compliance could ultimately result in suspension from the NFIP meaning that FEMA flood insurance would not be available in the community and the town would also be ineligible for disaster and public assistance funding.

This result would also likely have a devastating impact on the real estate market as flood insurance is a prerequisite for a mortgage in the flood zone.

# Option 1: Maintain Building Remediate & Fix Foundations

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## “Julian Fill” Removal

To be in compliance with DEEP/EPA, the Town must remove all contaminated material beneath the building:

*Estimated Cost*  
***\$5 million***



## Construction Requirements

(examples below)

- Demo & Reinstall Building Skirting
- Demo & Reinstall of Decks and Ramps
- Temporary Supporting of Roof Decks
  - Temporary Support of Building
  - Dewatering
- Permanent structure support

*Estimated Cost*  
***\$3.5 Million***



## FEMA NOV

To be in compliance with FEMA regulations, the town must relocate the grade beams to elevation 8’:

*Estimated Cost*  
***\$3 million***

**TOTAL: \$11.5 Million**

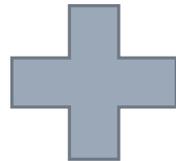
# Option 2: Demo Building Remediate & Rebuild Basic Necessities

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## Demolish Building & Foundations

To be in compliance with FEMA regulations, the town will demolish the Main Building and remove foundations (excluding the locker rooms)

*Estimated Cost*  
**\$2 million**



## “Julian Fill” Removal

To be in compliance with DEEP/EPA, the Town must remove all contaminated material:

*Estimated Cost*  
**\$4 million**



## Basic Necessities

Rebuilding basic necessities to current FEMA regulations:

- Lifeguard shack
- Concession
- Bathrooms
- Covered Deck

*Estimated Cost*  
**\$2.5 million**

**TOTAL: \$8.5 Million**

# HOW WILL WE PAY FOR IT?

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Over the past two years, the Town has accumulated and boards have voted to set aside significant surpluses, approximately \$15 million of which, is still available and could be used to fund costs related to both the remediation efforts and Penfield Pavilion repair.

In addition, the Town allocated \$1 million in ARPA funding for fill-pile-related costs.

Bonding for construction is also an option.

# **IS THERE AN OPTION TO RECOUP FUNDS SPENT IN THE PAST?**

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The Town is exploring all legal remedies, and the investigation from the State's Attorney's Office is still active.

FEMA confirmed in a January 3<sup>rd</sup> email that the Town is NOT able to reclaim the \$4.3 million in financial assistance under the Public Assistance Program to repair the Penfield Pavilion.

# BENEFITS OF PENFIELD PAVILION

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- 150+ Events a Year (80% are residents)
  - Weddings, Fundraisers, Holiday Parties, Mitzvahs, Birthdays, Business meetings, Funerals, Retirements, Reunions
- Concession Stand
- Changing Stations/Locker Rooms
- Restrooms
- Park & Rec events & Town activities
- Covered deck utilized by residents of all ages
- The Pavilion was appraised by an independent appraisal company in November of 2021 for \$7.4 million.



# **ARE WE DOING ANYTHING TO INCREASE RESILIENCY EFFORTS?**

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Resiliency at the Penfield Pavilion site is a separate issue from resolving the NOV.

The Town has committed to funding the hiring of a coastal engineering firm to update previous resiliency studies.

Once preliminary designs have been established, the Town will review the designs with DEEP/EPA & FEMA. Any acceptable designs will then be discussed with the public.

# WHAT ABOUT THE ELEVATION?

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To resolve the NOV, the natural grade must be restored to elevation 8' per National Flood Insurance Program (NFIP) guidelines.

DEEP and FEMA have jurisdiction over the elevation of the beach.

# CAN THE FEDERAL DELEGATION HELP US?

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On February 10, 2023, FEMA notified the Town for the first time on a phone call that the insurance downgrade process was looming. The Town has been working with FEMA since July of 2021 and, at no time until the February 10th call, was the Town alerted to a deadline date for compliance with the NOV.

Congressman Himes and I agree the only path forward that would prevent FEMA from taking action by March 31st is for the Town bodies to take action this month.

We discussed a coordinated approach with the rest of the federal delegation, to ask FEMA for an extension on the insurance classification downgrade.

# VOTE | NEXT STEPS

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The repair and remediation of Penfield Pavilion (option 1) passed the BOS on Monday, March 6<sup>th</sup>.

The RTM is due to take up the item up on Monday, March 27<sup>th</sup>.