

The Problem and The (only) Solution

As we near the end of a fairly wet summer, somehow Johnson Pond is 19 inches below normal capacity. Of course we all know why. The self-proclaimed saviors of the Pond; those who professed their love of the lifestyle Johnson Pond offers, are the ones who have taken every opportunity to destroy that lifestyle. However, as shall be demonstrated, the solution is reasonable and entirely within the Johnson Pond community's reach. And the best part is... there isn't a darn thing Soscia Holdings (Soscia) can do to stop it.

The Problem

While everyone who enjoys the Pond knows who and what the problem is, a brief recap of "the problem" will illustrate why there is only one solution. Upon Soscia's acquisition of the Pond, it became clear they were going to attempt to monetize their "investment". On multiple occasions, a representative of Soscia stated that it was only fair that they "get a cut of the profit" that the Town was making off of the surrounding properties, since the value of those properties was increased due to the existence of their pond. [Apparently Soscia has no concept of how Town finances work to make such a ludicrous statement.] Soscia has suggested two plans to profit from their acquisition: 1) charge each abutter to use the Pond; or 2) enter into a new lease agreement with the Town for, (rumor has it) \$1.5 million per year. As I described in my February letter, the first idea is logistically and legally impossible. Soscia seems to be going full steam ahead with plan 2.

After taking title to the Pond, Soscia filed suit in Superior Court to dissolve the existing lease with the Town. While outright dissolution of the lease was never a possibility, Soscia has been remarkably successful in getting away with pushing the absolute outer limits of the lease, lowering the Pond virtually at will, based upon phantom fears of flooding with just an inch of rainfall. In fact, it was the outright lie stated in court that the Pond could rise 12" with just 1" of rain that has become the cornerstone of Soscia's new found freedom to lower the Pond if a dark cloud passes overhead.

So what is the point of destroying everyone's summer? To send a clear message to every abutter that if the Town does not pay Soscia's ransom then you can kiss the water goodbye. Soscia wants each and every abutter to urge Town Council members to pay up. At the end of this I suggest there is a far better message you should be sending to the Town Council.

Why have I bothered to lay out what everyone already knows? Because it is important to understand the basic human desire at the heart of Soscia's plan. Greed. This is a "business plan" based on greed and executed through fear. The relevance of this to the bigger picture is that so long as individual humans control the flowage of the Pond, the temptation for greed will always be present. Even the Quidnick Reservoir Company was not immune to this basic emotion. Their desire to monetize its ownership interest is what led to the existing lease. This is not the first time this stunt has been pulled.

There is a rumor that a group of private (wealthy) individuals are attempting to negotiate the purchase of the Pond from Soscia. While I applaud the effort and will assume of the sake of this article that their intentions are benevolent, there are two problems with it. First, the greed factor. Unless the intention of this group is to turn over ownership to the Town, the risk of a future hostage situation remains. No matter how well-intentioned members of this group are, human nature will always be hovering over any private ownership of the Pond or its water rights. I mean no disrespect to anyone in this group.

But this is not the primary problem with a group of private individuals trying to purchase the Pond. The real problem is that they will inevitably overpay for it. I assume that this benevolent group (again, no ill will or offense intended) will want to be reimbursed for what they expend, should Soscia sell. I suspect the plan would be for the Town to set up a dam management zone whereby the 600+ properties around the Pond would be assessed their share of the purchase price over some length of time.

This plan will inevitably result in a gross overpayment to Soscia. Why? We know Soscia claims to have paid \$1.7million for the Pond (they did not). Any negotiation between Soscia and a new buyer will have to be north of \$1.7million. The problem... the Pond/dam and water rights are only worth somewhere between \$1 and (at best) \$416,000, the actual amount paid by Soscia.

The Solution

The only realistic solution is for a government entity to take the Pond by eminent domain. Ordinarily I am loath to suggest that the government is the answer to a problem. As Ronald Reagan said “the nine scariest words in the English language are: ‘I’m from the government and I’m here to help.’” However, in this case the Town of Coventry is the best entity to own the Pond since the interests of the Town and the abutters are almost perfectly aligned.

The right to exercise the power of eminent domain and take the land from Soscia should be unquestioned. By law, the government must pay “just compensation” which has been defined as fair market value for the land and any improvements taken. Thus, the only question is how much money would have to be spent to take the Pond from Soscia.

What is the place worth?

Soscia has, on multiple occasions, put the value of the Pond at \$100 million. Until now, Soscia’s \$100 million figure has been the only number on the table. Keep in mind that Soscia has offered no justification for this number... nothing... zip... nada. Soscia has stated unequivocally that they will not get an appraisal. This is a number pulled out of thin air to scare people to advance a business plan based on greed, executed through fear.

The preferred method for determining fair market value is by analysis of comparable sales. Interestingly, it turns out that dams come up for sale across the country, and they don’t

sell for much. Very often dams change hands for \$1 because the owner is seeking to rid themselves of the liability associated with holding back millions of gallons of water.

In Wisconsin, the Western Technical College acquired the Angelo dam and adjacent defunct powerhouse on the La Crosse River for \$1. The college invested \$4million to rehab the powerhouse and dam, in part to offset the college's power costs and also to offer classes on hydropower production. When no one was interested in taking the classes the college sold the dam and powerhouse for... \$80,000. The powerhouse produced an average annual income of \$87,000 yet the college could only find someone to pay \$80,000 for the newly renovated dam and powerhouse.

In Ada County Idaho, the County sought to sell the Barber dam with a 12,000 megawatt power plant (enough power for approximately 1,200 homes). The County held an auction for the property with a starting bid of \$1,000,000. No one came to the auction. The County eventually sold the dam and power plant for \$500,000. FYI, Johnson Pond does not have a 12,000MW powerplant.

There are several other examples of ponds/dams roughly similar in scale to the Johnson Pond dam that have sold across the country:

- Four hydroelectric dams on four ponds in Michigan for \$1.6million;

- Historic dam with small hydroelectric plant that powered a cotton mill in North Carolina for \$80,000;

- \$150,000 spent by residents of a pond in Maine so they could control the height of their pond.

- Nothing approaching \$2million, never mind \$100million.

But the best example is right here in Rhode Island. Pascoag Reservoir a.k.a Echo Lake is a 290 acre reservoir in Burrillville surrounded by several hundred homes and cabins. It has a long sorted history with an owner who drained the lake in an attempt to force the State of R.I. to purchase it (sound familiar?). In the mid 90's the owner offered to sell the lake for amounts ranging between \$300,000 and \$425,000. No one was interested. A subsequent owner eventually lost the lake for failure to pay taxes. The last market sale of the lake was in 2009, for \$60,000. This new owner also lost the property for failure to pay the taxes. The Town of Burrillville was the only bidder at the resulting tax sale, taking the property for the \$77,000 in back taxes.

The Town of Burrillville has a tax assessed value of \$521,700 on the 290 acre lake. It appears Burrillville assigned a generic backland value of \$1,800/ac. to the property. Using Burrillville's valuation, Johnson Pond (at 659 acres) would be valued at a little under \$1.2 million. There is little reason to use this valuation method but I'm including it as another example of a valuation method that yields a result far less than the \$100 million claimed by Soscia Holdings.

If we assume Soscia's purchase from Quidnick Reservoir Co. was an arm's length transaction then that purchase price could arguably be deemed to be fair market value. But keep in mind that part of the Soscia purchase included 147 acres of dry land adjacent to Johnson Pond

(Plat 59, Lot 5). The tax assessed value of that 147 acres was \$1,284,000 leaving a balance of \$416,000 as the actual purchase price for the Pond. The Town is not obligated to purchase this 147 acres if it were to take the Pond from Soccia.

Nothing above comes within \$98million of Soccia's \$100million unsubstantiated claim.

The fact is, there is nothing inherently valuable about owning a pond and dam, particularly when there is no significant hydropower generation or other business unique to a pond that produces income. When determining the value that must be paid to take the Pond by eminent domain, the Town would only have to pay for the pond and dam, but not for any lost business value unless that business was unique to the property being taken. For example, assume the government wanted to take your house and you operate a \$10million/yr. home business. The government would have to pay you for your land and house, but not your business. Why? Because you can take your business to your next home. This is exactly the same as if you chose to sell your home to someone else. If you put your house on the market you would not expect the new owner to have to pay for your business, you would just move it to your next location. Now assume you own a reservoir that operates as a public water supply where you get paid to supply water to a community and make \$10million/yr. selling water. In this case the government would likely have to compensate you for the land, buildings and lost business opportunity because the land and business are inseparable.

Soccia has suggested putting solar panels on the water, but there is no advantage to putting solar panels on water versus putting them on land. In fact, there is no possible way a floating solar installation would be cheaper to install than a land based one, even assuming they could get past the regulatory hurdles. Soccia can be compensated for the fair market value of the Pond and move its solar panels elsewhere. A floating solar farm would not increase the value of the Pond for purposes of eminent domain. [Nor is this idea feasible. Environmental studies, lawsuits, zoning issues etc. would kill this idea before it started. While the government is required to pay for the "highest and best use" of the property, there must be a present and absolute right to engage in that use at the time of the taking. That does not exist for a floating solar farm.]

Johnson Pond cannot be used as a drinking water reservoir and thus there is no realistic way to profit from the water itself. Soccia has suggested building a marina, but that would only benefit the value of the dry land where the marina is situated, not the value of the Pond. Soccia could claim they own all the fish in the Pond, but who would buy them?

Dams are nothing more than a pile of dirt, rock and liability. They are a status item... the proverbial white elephant. There is little point in owning one without the ability to generate enough hydropower to cover the taxes and insurance. Their liability outweighs their asset value, and the market knows this. I am not an appraiser, but I haven't seen anything that could justify a value over \$500,000 and far more likely something closer to \$150,000 (or less).

This assumes that the dam is in good shape. If the dam is in need of any serious repair then the value goes to \$0 (or less) since the cost of repair would have to be subtracted from the above numbers. Interestingly, Soccia can't keep its story straight on this one. In court Soccia

claims they are afraid of the condition of the dam and thus they must spill water yet simultaneously say it is worth \$100 million dollars. Must be that gold plated gatehouse.

The Town of Coventry has a two year window to solve this problem. They must solve it before the current lease expires. However, for the sake of the residents around the Pond the Town must act quicker since it has been wholly ineffective in getting the terms of the lease honored by the Superior Court (much less Soscia). Until the Town takes decisive action the residents of Johnson Pond will enjoy a repeat of Soscia's actions for the next two summers.

Here's what needs to happen, step by step:

- 1) Town needs to obtain an appraisal from a well-respected commercial appraiser who has experience with unique property and who has testified before a court.
- 2) Town needs to obtain a trial attorney with experience in eminent domain law and valuation arguments.
- 3) Town needs to prepare the paperwork to establish a dam management district so the costs associated with the Town taking Johnson Pond are assessed to those who have access to the Pond.
- 4) Town needs to prepare the paperwork needed to take the property by eminent domain.
- 5) Town Council needs to take the above four steps and craft an intelligent, comprehensive plan of action and put it on the agenda for public comment.
- 6) The people around Johnson Pond need to turn out in force and demand action. Same people, probably through the Johnson Pond Civic Association, should consider raising the funds to pay for items 1 and 2.

You will notice that the name Soscia does not appear in any of the above 6 steps. That's because they are not needed to solve the problem.

The solution is entirely within your grasp. It just requires leadership and the will to act.

Good Luck,

Chris Anderson, Esq.