

**BOARD OF SELECTMEN
SPECIAL MEETING MINUTES
TUESDAY
JUNE 24, 2014**

Members Present: Antone C. Vieira Jr., Chairman
Richard M. Spirlet, Vice Chairman
Steven J. Ouellette
Craig J. Dutra
R. Michael Sullivan, Clerk

Also Present: Stephen J. Lombard, Business Manager

Chairman Vieira called the Board of Selectmen meeting to order at 6:01 P.M. in the Westport Town Hall, 816 Main Road, Westport, MA with the reciting of the Pledge of Allegiance by all present.

*Note: Chairman Vieira stated they would take a couple of the agenda items out of order because Mr. Dutra was running behind and wanted to be present for the Beach Avenue item.

319 Grant Update:

Mr. Lombard updated the Board of Selectmen regarding the 319 Grant. Mr. Lombard stated on the breakdown that has been provided, the last two columns are what the Town has spent and what the State has spent. The balance remaining for the Town is \$25,000. The Town has three options: Go forward with the grant and have a Special Town Meeting with an article for \$25,000; we can use the Town forces to finish the project; or reduce the scope of the grant to accommodate without coming up with the \$25,000. Mr. Lombard stated at last Monday's meeting, discussions were had with Tom Schmitt, WRWA and Wayne Perry on this matter; Mr. Perry will be coming back with figures for the Board and by then, Mr. Gonsalves, Highway Dept. will be back from vacation and available for the meeting also, where the Board will be able to determine the best course of action for the Town. The worse case scenario is that we may have to reduce the scope of the project. Mr. Sullivan asked if the \$25,000 is what is due or is this an additional amount we need to spend. Mr. Lombard stated that it was not additional. Mr. Lombard stated there is two leaching fields left on the project with most of the money coming from State reimbursement. The original grant was \$233,000 with the match of \$156,000 as the Town's share. Mr. Vieira stated this is a very good summary of the grant, which began when Mr. Coughlin was here; at the time, Mr. Coughlin proposed \$10,000 from the Town and \$15,000 from the Library. In working with the Watershed and Mr. Perry, we did not change the amount but we believe that with all the work we did last summer, both in manpower and equipment and materials, we are submitting the revision and we believe we are pretty close to the \$25,000 and we may be able to work with the State on it, if not, we have three options we can talk about at our regular meeting coming up. We have not changed the bottom line which we agreed to some time ago, but we are hoping to be able to negotiate with the State.

Charter/Comcast License:

Mr. Lombard stated this is part of the process for the transfer of the license from Charter to Comcast. Mr. Lombard stated he had just received it yesterday in the mail and sent it to Town Counsel but he has not heard back as of yet so he is asking the Board of Selectmen for an affirmative action tonight subject to review by Town Counsel. This is probably just routine based on the many licenses held by Comcast in various towns and cities. Mr. Vieira stated that Town Counsel will review for any legality; and this could be on our next meeting but we probably have time constraints. Mr. Spirlet stated that we have a 10-year contract with Charter and Comcast will have to honor that; so, we can only get better not worse.

Motion made by Mr. Spirlet to forward to Town Counsel for review and recommendation of the transfer request of the license from Charter to Comcast; approval is subject to Town Counsel's review and recommendations. Second by Mr. Sullivan. The Board voted unanimously in favor.

Revenue Projection:

Mr. Lombard reviewed his report on the projected revenues for FY '16, '17 & '18 and the effect of 2 ½ on those budgets per Mr. Sullivan's request. Mr. Lombard stated that for FY '16, Proposition 2 ½ would be \$566,091, Added Growth would be \$175,000, State Aid increase would be \$59,518, and Estimated Local Receipts increase would be \$98,125 for a Total Revenue increase over FY'15 \$898,734 with an allowance for overlay of \$370,000 resulting in a Net Revenue available for the budget of \$528,734. In applying the ratios that we did for the FY'15 budget (School 54% and Town 46%) the Town Revenue available for budgets would be \$243,218 minus your fixed costs increases would give you a Net Available for Budgets of \$58,128. Mr. Lombard cautioned the Board on the amount for the Schools because last year, it went up 12%. Mr. Lombard stated there would be a minimal increase for the Town and Schools. Mr. Lombard said he has gone over these figures with Mr. King so he is aware of this and he has offered Mr. King that he would be available for any help or to answer any questions. Mr. Sullivan thanked Mr. Lombard for crunching these numbers together in order to get the big picture.

Building Commissioner:

Mr. Lombard stated that during annual appointments last week, the Board appointed a Building Commissioner but did not put a start date. Mr. Vieira stated his understanding was that we had appointed an Interim Building Commissioner and when Mr. Souza passed his test, he would become the Building Commissioner effective immediately but he did not want to speak for the whole Board, so he asked Ms. Bouchard to hold off on the date. Mr. Dutra stated it was his understanding also, that it would be effective immediately. Mr. Spirlet stated he was concerned about the budget, whether there was enough before July 1st but the position was effective immediately. The Board of Selectmen were in agreement that the appointment was effective immediately as of June 16th.

Discussion – Beach Avenue Memorandum of Understanding:

Mr. Sullivan stated that he presented to the Board, prior to the meeting, the draft MOU; he would be adding a couple of things tonight and he would be making a list of the Board's concerns and that list would be forwarded to Town Counsel to be addressed as quickly as possible. Mr. Sullivan passed a copy of the last slide picture from a week ago of Beach Avenue with a couple of slight changes by way of this last phase. Mr. Sullivan stated the MOU came with an Exhibit A which is a sketch of just the turn-around area, which is difficult to read and has to

be changed, along with a suggestion from the Commission on Disability and that is at the end of the turn-around, you will see that the road continues for another car-length or so and we have added two or three handicapped spaces at the very end. Mr. Sullivan stated he talked with a couple of people on how we can add handicapped access at that point; limited impervious surfaces or some type of other services. This where the vehicular traffic would end with two or three spaces; also added was how the boardwalk has been discussed as it goes out to the Knubble. One of the things we need to do is to have maybe Planning or someone to do a proper Exhibit A that shows all the detail here. This is a big project and although Mr. Sullivan stated he does not intend to be Project Manager, he took the time to look at all the major components of this project which include bringing the Memorandum of Understanding to an agreement, doing the same with a lease, creating a turn-around, doing a permitting process to allow us to pick up the sand off of the road and get it back on the beach so we don't have to haul it away, a detention pond project suggested on the north side of the road and a dune restoration and boardwalk project. Mr. Sullivan stated there were six items on his list but he did not have time to sit down with Ms. Ostroff regarding the currently proposed access plan which includes some boardwalk and mobi mats, which he would like to work in after sitting down with Elaine Ostroff. He continued by saying that this project with all its' components, would stretch out for many months. Mr. Sullivan noted that he would like to start a discussion tonight, make a good list of all the concerns and questions, and get them to Town Counsel tomorrow morning. Mr. Sullivan stated he hoped that at the end of their discussion, they would agree that the project was on a trajectory that would allow us to not pave but to select this course of action, or if we are not satisfied, to go ahead and give Mr. Lombard guidance to sort the bids that were received last week. Mr. Sullivan began his list with Mr. Vieira's concern of Authority vs. Highway Surveyor under Chapter 41, Section 62 (Highway Surveyor's duties). Mr. Sullivan stated he had a question of the transfer mechanism that the Town would use because these folks have generously offered to donate the difference of what it would cost for maintenance of the road that is not paved. Mr. Vieira stated we have already paid \$14,500 to Tibbetts for bidding one and two, and there was some discussion regarding reimbursement of the costs associated with it; in addition to Tibbetts, we have in the last billing from Kopelman & Paige, \$1,000 associated with that, some of which was discussions with the Commission on Disability. Mr. Sullivan suggested that there was an offer to pay for our changing of direction on paving and I think we should discuss that at a later date. Mr. Sullivan stated he would put that down in the questions as to what mechanism or method would work for a private entity to contribute. Mr. Spirlet stated as a correction, it was \$14,500 on the original and there was an additional cost for engineering on the second one of about \$10,000 so it was about \$25,000 for an engineer. Mr. Vieira stated that was not the only bills, there is still more. Mr. Sullivan stated he would suggest a later time to discuss these bills. Mr. Vieira said the limit was \$10,000 but the magic number is over \$20,000 from what the Business Manager is given to us but we can talk about that at a later date; the reason I brought it up is because the bid requirement, which is what Mr. Sullivan asked about before, was whether there was ploy to move up the award; we had the bid opening, there were two bidders with a third coming in beyond the time and was not accepted. The bid opening was last Thursday with the bid review scheduled for June 30th, we can either prepare the bid award for June 30th or we can put it to July 3rd; the last time, Mr. Vieira thought this Board preferred June 30th. Mr. Dutra stated he thought the Board was meeting tonight to give the Business Manager direction on how to proceed with the bid; the vote was supposed to be awarding the bid to pave two or three streets and the outcome of this meeting would be that vote and then Mr. Lombard would be prepared to give his recommendation on Monday night to the Board. Mr. Dutra stated he believed that Mr. Sullivan has done a great job on outlining what we need to do and how we proceed, particularly if this Board chooses not to pave but now we need to proceed to negotiate the MOU, to do the other parallel projects. Mr. Dutra stated we will have questions as to whether this is an Enterprise Fund, Revolving Fund, etc. Mr. Lombard stated the Board had 30 days to enter into a contract. Mr. Dutra stated that his understanding was that Mr. Lombard wanted direction from this Board tonight and he understood that the timeliness of having a decision made on the bids, is what drove the timing of tonight's meeting. Mr. Sullivan stated to Mr. Lombard that he wanted direction on the bids because we have some options here and because there is an option for the paving of Beach Avenue in that bid. Mr. Lombard stated it was an alternate of paving but he needs to know which way to go. Mr. Sullivan stated Mr. Lombard wanted direction so he could prepare for next

Monday. Mr. Dutra stated there was an urgency to meet before next Monday, so he was wondering why; he understood the decision to meet tonight was to go over everything that has happened so we could make a decision on what we were going to award the bid for. Mr. Lombard stated his last day was June 30th and the new Town Administrator was not going to be here until July 7th, and that is why the timeline said you would have the bid by July 3rd, in the interest of trying to get this project moving, and so you could have projects such as Riverview done, that is why I have to have this in for the 30th for presentation to the Board; that is why there was a question of can we put this off. Mr. Lombard stated he thought he was clear that once you are presented with the award, the Board had 30 days in which to sign an agreement; that is why you are here. Mr. Sullivan stated he would like to continue to collect all the concerns, move ahead and enter into this unusual agreement and at the end of the discussion, whether we have an agreement on non-paving or if we fall back to paving and hopefully that would give Mr. Lombard the guidance he is seeking. Mr. Vieira referred to an email from Jeff Bull received this afternoon, which was provided to the Board this evening, where Mr. Bull went step by step with Mr. Sullivan on his concerns; also, there was another from John Lenard for safety dated June 23rd, with police recommendations regarding his concerns. Mr. Sullivan stated he has Mr. Bulls' concerns listed. Mr. Vieira also mentioned that the Board heard from Mr. Gonsalves and in addition to the State Law, there is a Town Bylaw that states what we can do for a public road and the requirements for Town Meeting. Mr. Vieira stated he mentioned the lack of authority of this Board to overrule what Town Meeting voted; the language speaks to the criteria of a public road having to be paved and meeting certain specifications. Mr. Spirlet said the road has been a public road for 75 years plus. Mr. Dutra stated his understanding that when that road was accepted, the criteria for that road was such that it is not included in the current Town Bylaw. Mr. Vieira stated that Chapter 90 funds have been used to repair this road and Chapter 90 has specifications of how a road is supposed to be maintained; the funding we have now, that went out to bid, is under Chapter 90; before Mr. Gonsalves could ask for an award, he had to make sure the specifications were approved by an engineer and approved for Chapter 90; we have had DEP and a number of groups involved before there was a sign off to have this road paved; so in fairness, we have heard from Mr. Gonsalves on a number of occasions, so before we can sign off and reverse, we have to see if we have the authority to do that as a Board and what is the process, does it involve Town Meeting. Mr. Sullivan stated he would put on his list, can Chapter 90 be used on a gravel road; can the Board change the status of a public road, for example, banning vehicular traffic on a portion of the road. Mr. Spirlet stated the question would be can the Board do away with a road that was accepted at Town Meeting. Mr. Vieira added, does this Board have the authority to enter into a MOU, without going to Town Meeting, based on State Statute and local Town Bylaws. Mr. Vieira then reviewed the MOU. Mr. Sullivan stated the only permit needed here is the one allowing the clearing of 48 ft. Mr. Vieira mentioned part 3 – the restoration of Pond Meadow; we can't do anything in the absence of the Conservation Commission who has already sited violations and are in the process of enforcing. Mr. Vieira stated it is not the Town's responsibility to deal with stormwater runoff from individual's homes, which is in here; if we are going to take this as policy, in all fairness, we should do this for other areas of Town where we have similar problems. Mr. Sullivan stated he did not write the spec; it was in there. Mr. Vieira continued to read from the MOU and stated that if someone has violated a detention pond, there is a procedure to follow and it should not be in an MOU committing Town finances. Mr. Sullivan asked if Mr. Vieira's question was, does the MOU contradict the authority of the Conservation Commission. Mr. Vieira also added "committing Town resources to an area already in violation". Mr. Spirlet stated he went through the MOU section by section and his notes included that the road was in existence for 75 years created by WPA; paragraph two – concern of people getting stuck in gravel, they are still getting stuck; paragraph 3 – it is mentioned the removal of sand; it is harder to remove sand from hardpack dirt than it is from pavement; and what does restore and protect sensitive barrier beach, habitat and wildlife have to do with the paving of a road; next, under commitments – shells are very difficult to walk on and cuts tires; as for the turn-around, we are not getting 48 ft. from someone, we already have 30 ft. of roadway and we need roughly 18 ft. which we could use the beach area, land we already have; as for property maintenance, it is very difficult to maintain and not cost effective; as for permitting, we already have state and local approval, everybody in the world was brought down there and we were allowed to continue. Mr. Sullivan stated that was put in there to seek a permit for when we

move sand from the road; right now the understanding from Conservation is that we can't put it back on the beach. Mr. Vieira stated that is because the sand is not the same sand because it is polluted from the stormwater runoff issues; we have violations on the road from the abutters. Mr. Spirlet stated he was talking about the road, not the sand, so to continue, we are talking about a 30-year lease; Mr. Spirlet stated he had an issue with this, especially with land we own. Mr. Spirlet referred to the dunes, turn-around and non-town granted funding, what does this have to do with the road; what if we don't get the grants, does it revert back to the Town. Mr. Spirlet stated he had a problem with the boardwalk, if asphalt is used, there is no need for a boardwalk; now a walkway has to be removed at the end of the season, which means someone has to go and take out that walkway, this is year round care; originally, we were paving all the way to the Knubble and the only walkway was going to be over the dune, which I don't care about what they do with the dune, my concern was getting the road open. My concern, at the end of the season, is who is going to take it down and store it; what if we have a nice fall day and someone with disabilities can't get down there, we have eliminated their access. In referring to Pond Meadows, Mr. Spirlet stated this is not a Town issue, it was created by the abutters and not our responsibility to raise the road and everything else. Mr. Spirlet stated that in short summary, asphalt would provide an easy all around access for the disabled, elderly, families with young children; it is impossible to get through gravel or shells on wheelchairs and walking dogs on shells cuts their pads; there would also be no need to remove a boardwalk during the off-season; these are just some of my concerns in addition to the monies that have been spent on this already and the possibility of a lawsuit from the original bidder. Mr. Spirlet stated that Town Meeting accepted Beach Avenue and the Board of Selectmen should not be overriding Town Meeting. Mr. Sullivan stated he heard a very compassionate view of why we should pave the road and reviewed Mr. Spirlet's concerns noting that shells are off the table. Discussion continued regarding the turn-around and the balance needed to create it. Mr. Sullivan stated by taking this course of action, it will involve more maintenance but they have offered to pay for it; and we are looking at replenishment, which is why we need a permit. Mr. Vieira stated two things: shells are no longer being considered so we are back to a gravel road and maintenance; also, a report from Mr. Lenard states there were over 200 cars, without any stickers and many of them out of state, went in and turned around without any problem; Mr. Vieira stated he has been down there quite a bit in the last couple of weeks and has witnessed the same as has the Highway Surveyor. Mr. Sullivan noted this as to whether we needed a turn-around or not. Discussion continued regarding Mr. Spirlet's concerns; there is no land swap and the 30-year lease is for a turn-around on their property. Mr. Vieira stated there is no way you can have a legally binding 30-year lease between the Town and the other parties before July 1, 2014 but if they donated it, that is a different matter. Mr. Dutra stated the Board has the discretion to enter into a shorter lease. Mr. Vieira stated it needs Town Counsel to see if we have the authority because it's a public road. Discussion continued regarding page 1 – paragraph 1, needing clarification. Mr. Ouellette stated he had concern over the shells but those have been removed and he is not concerned over a gravel road, it only adds to the beauty of the area. Mr. Vieira asked Mr. Sullivan to respond to the concerns in Mr. Bulls' email. Concerns from the public were taken at this time. James Whitin spoke on the accepting of roads; a wooden walkway would be a permanent structure, unlike the mobi matts and he believed the Board had the right to enter into a long term lease, not for Town land but a lease with a private party. Mr. Vieira stated Town Counsel should be asked can the Board of Selectmen enter into a MOU, MOA or contract / lease to allow the Town to reduce the size of an accepted road without going to Town Meeting. Wayne Sunderland stated he does not know of any Chapter 90 roads that are not paved; also, if you are obstructing a public way, in any manner, shape or form, you are infringing on the layout of that road that was accepted. Mr. Sullivan agreed, the status of the road may have to change. Mr. Vieira questioned where the other interested parties were tonight; Mr. Sullivan explained. Discussion continued regarding reports received, policing and maintenance. Mr. Ouellette stated that liability was being created by opening up this area and also, the addition of police enforcement. Mr. Sullivan stated the question would be does the MOU obligate us to go above and beyond the regular responsibilities for which are responsible for now. Mr. Vieira added, how decides the adequate enforcement and policing; what is legal leverage of the Town and the different departments.

An abutter stated that when he purchased his property three years ago, he met with Fire Safety regarding a turn-

around for fire trucks; the gate was put up because an ambulance and fire truck could not turn around. Jim Almeida wants the road kept public and he feels that it is being made to sound as though this is a burden to the Town if it is paved; have not heard what the benefit is to not paving; the issue needs to be put on the table as to why no paving.

Mr. Gonsalves said there is no reason to have a turn-around or a lease; this has to stop, we are costing taxpayers money and I can't do my job. Mr. Gonsalves stated he visits the area every other day and he picks up trash. This has to stop, it is foolish just because of a few people in the area; let's just pave the road, install the turn-around and walkway and allow me to maintain the road. Mr. Gonsalves stated that over the weekend, he received a call from the Police that people were driving over the dunes and they were residents from down there. Discussion continued regarding one or two hammerheads. Mr. Sullivan stated a lot has been down there and has not survived. Mr. Vieira gave a brief history why the area is what it is today, not due to washout but decisions made in the past by prior Boards and Highway Surveyors. Mr. Sullivan stated that if this does not work, then we just pave the road; this is just an opportunity to do something cooperatively. Discussion continued regarding limited parking; Mr. Vieira asked if Mr. Sullivan was willing to suspend the No Parking regulations at Acoaxet Road for access due to limited parking in that area while this issue is resolved. Mr. Gonsalves stated that right now, it is a free for all; with paving, he will be able to paint the designated areas.

Motion made by Mr. Dutra to proceed with the non-paving option; to further the negotiations of the MOA and not bid the elements that call for paving. Second by Mr. Ouellette. Mr. Sullivan asked that the motion include "forwarding the questions to Town Counsel and seek guidance on all these points". Mr. Dutra felt that Town Counsel should be here to answer these questions because they are very complex questions and did not add the amendment. Wayne Sunderland, Tom Hancock and Elaine Ostroff voiced their opinions. The Board voted three in favor, 2-opposed (Vieira, Spirlet).

Discussion continued but no votes were taken.

Adjournment:

Motion made by Mr. Ouellette to adjourn the Board of Selectmen Meeting at 8:05 PM. Second by Mr. Sullivan. The Board voted unanimously in favor.

Respectfully submitted,

Denise Bouchard, Secretary to the Board of Selectmen

APPROVED: _____
R. Michael Sullivan, Clerk