

**BOARD OF SELECTMEN
SPECIAL MEETING MINUTES
TUESDAY
SEPTEMBER 30, 2014**

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

Also present: Timothy J. King, Town Administrator

Absent: Craig J. Dutra

Chairman Vieira called the Board of Selectmen meeting to order at 6:00 P.M. in the Westport Town Hall, 816 Main Road, Westport, MA with the reciting of the Pledge of Allegiance by all present.

Joint Meeting with the Water Resources Management Committee regarding the 319 Middle School Grant

Present for the Water Resources Management Committee: Thomas Schmitt, William Burns, William Harkins, Andrew Sousa and Antone C. Vieira Jr.

Absent for the Water Resources Management Committee: James Walsh, Jay Tripp, Richard Barresi and Maurice May.

Mr. King stated the 319 Middle School Grant has been a difficult one for the Town of Westport to manage. Back in early September, a memo was sent to the Board outlining the options we could undertake in order to complete the project, as Mr. King understood it. Mr. King stated there were four major components as described by the Project Engineer, Wayne Perry. In breaking this project into 3-4 remaining components, it seemed feasible to be able to complete the project by the end of June. In the meantime, Mr. King stated he received an email from Malcolm Harper of the DEP, in which he was quite anxious in knowing the Town's level of commitment in completing the project and wanted to meet with representatives of the Town to discuss this. On September 26, 2014, Mr. Vieira, Mr. King and Mr. Harper met and there was some clarifications of some misconceptions that Mr. King had of the project. Mr. Harper explained that DEP was still expecting the Town to complete all eight remaining components, not the four as the consulting engineer had stated. In addition, there had never been an amendment to reduce the scope of the project and there had been budget amendments that moved money around from one line item to another. Mr. King stated that when he spoke with Mr. Harper about reducing the scope of the project, Mr. Harper indicated that would be problematic because this was a competitive grant with other projects and by removing a significant portion of the project, it would reduce the impact of the project and there could have been other projects that might have scored higher than Westport's project that could have been awarded at the time the grant applications were being evaluated; so Mr. Harper was very reluctant in reducing the scope of the project. In addition, he advised that the project would have to be completed by April not June because all paperwork, documents and closing reports needed to be submitted by the end of June. Mr. Harper also had significant concerns of the Town being able to complete the project within a seven-month window if the Highway Department was used to complete the work and/or the use of municipal appropriations to finish the project. Mr. King stated it is clear that there are no sufficient municipal appropriations to be used; and with the Highway Department not being a very large department, and with the uncertainty of winter weather coming, it seemed unlikely the project would be completed on time. Mr. King stated that Mr. Harper was encouraging the Town not to finish the project because of the reasons just sighted. Mr. Sullivan asked what reasons Mr. Harper gave for not finishing. Mr. King stated because the time

frame was relatively short and having an uncertain winter that might preclude getting in there early; and also, the limitations and constraints of having to do the work around the school calendar and school day; if this were to be put out to bid, there would be additional costs because of those limitations. Mr. Sullivan stated that Mr. Harper was discouraging us from finishing because he was leaning towards the fact that we would be unsuccessful in finishing? Mr. King stated that was correct. Mr. King stated that when Mr. Harper was asked directly if the Town's decision not to complete the project would adversely affect any applications in the future, he assured us that it would not, on the contrary a failure to properly finish the project by Spring 2015 would have a terrible impact on future applications from the Town.

Mr. Vieira stated another of the concerns that Mr. Harper had was not just finishing the project, but the Town's ability to be able to fund what was originally spoke of in this grant and what was suggested by two former Administrators for sources of funding; there was a \$10,000.00 warrant article that was never presented at Town Meeting, that Michael Coughlin had committed to when the grant was submitted and a \$15,000.00, which Michael Coughlin also committed from the Library Building Committee, who were never approached about this funding and no previous Boards of Selectmen were aware of; this became apparent when this Board raised the issue in terms of the amount of time the Highway Department was doing as in-kind service; the in-kind service was way beyond the 40% and now the estimate is about 60% Town's involvement; and there was an early concern by the Schools to not construct the rain garden behind the School; it was not constructed after meetings between the Town Administrator and the School Committee. Since that time, there has been further discussion of what the contribution of the Town was; at one point it went out to bid, with the award going to Jones Construction, and Jones never did the work; last summer, then Administrator Jack Healey suggested that we rebid and that was awarded to Candigit, the second lowest bidder and that work was not done either; it seems now that we did not have the funds to pay for those contracts. Mr. Vieira then stated he pressured the State a bit and asked where the paperwork was for this all these discussions and changes that took place. Mr. Vieira stated that Mr. Harper was of the opinion that given the status of the Middle School and the possibility of the school not continuing, even as a school, that maybe looking at the project as it stands now, and looking at some of the other interests the Town may have including Old County Road, which has been talked about by the Water Resources Committee, it makes sense to regroup, with Mr. Harper volunteering to come down before we do anything and attend a meeting with the Town and the Watershed together and talk about what might make sense on the completion; for example the parking that is closest to Old County Road, which is connected to the Middle School, if we take that asphalt out of there, there is a possibility of doing something with that area and the location of the rain garden may change a little bit. There maybe also be some more interesting opportunities if we take a halt with the grant as it presently stands right now; to go forward, this Board would have to come up with the additional funds, have to identify how we are going to interact with the engineering component, and the State would have to acknowledge/identify the request for change orders (four of them) which the State said were never approved but was submitted by two previous Town Administrators. Mr. Vieira stated that at this point, which was recommended, it makes sense to stop given all the situations that have developed, to regroup and work with the DEP and share some of the responsibilities going forward; and there will be no adverse affect on the Town this way. Mr. Spirlet asked Mr. King what his recommendation would be. Mr. King stated his recommendation would be to notify the DEP that we have no intention of continuing this project, to halt the project and close it out.

Motion made by Mr. Spirlet to accept the recommendation of the Town Administrator. Second by Mr. Ouellette for discussion.

Discussion: Mr. Ouellette stated the Watershed originally proposed this and he wanted to make sure they were on-board also. Mr. Schmitt, speaking as a member of the Water Resource Management

Committee and as a member of the Watershed, stated there have been dozens of meeting on this matter and recently he attended a meeting with Roberta Carvalho, Mr. King and Mr. Vieira and it makes sense under the circumstances, it is the wisest course, to follow the recommendation of the Town Administrator, take this opportunity to regroup because he believes there are a lot of other projects that the Town can go forward with that will address stormwater. Mr. Schmitt asked what was the mechanical process that the Town will have to go through to close down the project and account for the monies; what are the practical implications of redoing the engineering work. Mr. King stated the remaining engineering work will include the computations for the final report, computing the volumes of waste that were removed, the as-built plans, the technical report; Mr. King stated he will be working on preparing the administrative report and any remaining costs that have occurred since July 1st or over the next month or so; the Town has the surplus to close out the project, which is reimbursable to the Town. Mr. King explained this project is 60/40 match, 60% State and 40% Town, because the expenses that have already been incurred by the Town are at 60% so far, we still have about \$25,000.00 to the good as far as our contributions, and as far as this grant is concerned; so, any costs we incur will be submitted and he expects to be reimbursed for them, for the remainder of the project. Mr. Sullivan stated the reason why we think we can cover these expenses needed to close the project, is because we have spent more on our side than we were supposed to? Mr. King stated that was correct. Mr. Sullivan stated as far as how much of the project is completed, how will the State handle this if we are only 50% complete and we have spent 75% of the money? Mr. Vieira stated we have had conversations with the State and ongoing dialogue on this; the original project was supposed to be done by the Highway Department without any outside contracts; at some point, ledge was found and there was a change order that the BOS was not aware of for contracted services and this where Jones and Candigit came in; in the scope of services, there is a rain garden included which may be in a leaching field near the school but it certainly abuts the leaching field for the school; so there were a lot of questions looking at hindsight and from the State's position as well; we did not get any indication from anybody at the State, or with any discussions we have had that this would jeopardize anything going forward. The State appreciates the fact that the Town now has a Water Resources Management Committee, they appreciate the fact that the BOS have identified a process where the Town Administrator is the lead but knowing that there is a checkoff from the Water Resources and Selectmen, and they realized that in the past, the BOS had not signed off on the original grant or any change orders or any change in line items. Mr. Vieira stated that in the best interest, it makes more sense to stop the present direction, regroup with the State and have a meeting of all the interested parties to try to address stormwater issues that people were attempting to do initially. Mr. Sullivan asked if there were assurances because it looks like we have spent 2/3's of the money; Mr. Vieira stated we have not spent money, it was in-kind service. Mr. Sullivan stated the project grant was \$389,000.00 and \$232,000.00 has been expended. Mr. Vieira then read from Mr. Healey's Town Administrator Report from September 3, 2013. Mr. King stated that we have no assurance/promise from the State that we will be reimbursed, however, Mr. King stated he felt reasonably confident that an arrangement can be made with the engineer, that if we are aren't reimbursed, we are not going to pay any further engineering expenses; and those would be the only significant out of pocket expenses that the Town would incur. Mr. Sullivan asked what the additional expenses would be if the arrangement does not come to fruition? Mr. King stated \$10,000.00 at the most. Mr. Harkins asked how much of the project was completed. Mr. King stated there were 14 rain gardens, a recharge system, a water quality swale and two underground structures; completed are 7 rain gardens. Mr. Schmitt stated that we are more than half of the project; it is computed by square footage. Mr. Burns stated one of our objectives is to clean the waters in Westport and the 319 grant is a good project but he did not see the entire design of the project in the report regarding nitrogen and pathogens, etc. Mr. Schmitt stated as far as removing pathogens, we won't know until a report is received from the engineer and the affect it is having; the circumstances have changed, we don't have the in-kind resources to continue so the best thing is to follow Mr. King's recommendation, which will

give us the greatest benefit and allow us to concentrate on other initiatives in the future. Mr. Vieira stated the State is looking for an understanding from this Board; a lot of this predates this Board and the Water Resources Management Committee. Mr. Schmitt stated it was thought that the Highway would be doing the work. Mr. Vieira stated that in all fairness to the Watershed, they were not aware of the change orders or the discussions that took place. Mr. Sullivan stated his concerns are multi-layered: we have a process that does not work; we don't have all the information to evaluate this and we have no other alternatives except to close the project down which is disappointing. Mr. Sullivan stated we don't have the answers as to what it would cost to finish this project and we are evaluating our options at the twelfth hour. Mr. Vieira stated that Steve Lombard went through all the change orders, groups have had discussions on this at meetings in May and June; and on June 13th, Jack Healey, in an email, recommended closing out this project because even he wasn't aware of the \$25,000.00 needed. Mr. Sullivan asked if Mr. Healey mentioned a deadline with the State, we were up against. Mr. Vieira stated there is no mention of a deadline with the State; Mr. Harper stated what he would like to have when he meets with his supervisor on September 30th; people are assuming that date, which may or may not be; certainly he would like to know if we are going forward. Discussion again continued. Mr. King stated the Town does not have a penny to put into this project. Mr. Sullivan stated this is a perfect CPC project; over the last five years, we have funded several components of a study to look at the pollution loading of our river, which was funded with CPC funds; we have spent \$180,000.00 of CPC funds, so fixing this problem is within the CPC category. Mr. King stated there are certain categories that can be funded, if this qualifies, he would stand corrected. Mr. Vieira stated in his opinion, at this stage, we can't go to CPC to finish funding; there are other sources of funding, if the Town wants to make the commitment to complete the project. More discussion continued. Mr. Vieira stated that with the suggestions from the State, the Watershed and the two Town representatives, we should follow those suggestions, cut our loses for the Town, come back with another project for the Town that deals with stormwater and then go forward with CPC. Mr. Sullivan stated he has three disappointments: we are talking about our options after our options are actually closed out; we don't have the information, which is not Mr. Kings' fault, but this is our 3rd Administrator in succession and we still don't have the project under control. We have been denied for a second 319 grant that we put in for; there may be a link here and it should be investigated. We need to figure out how to do this different in the future. Mr. Vieira referred to June 13, 2014 memo from Mr. Healey regarding the Accountant's concerns of reimbursement; we do have a Town Administrator in place, we do have a Water Resource Committee in place and we can fix this; we were told that we would not be successful on a second grant back in June because there were other higher priority projects ahead of us. In all fairness to Mr. Ouellette, the prior Town Administrators did stuff without the Board's knowledge, so he is encouraging as Chairman that the BOS and WRMC vote to take action based on what we know. Following a lengthy discussion, a vote of the Board of Selectmen took place: The Board voted 4 in favor, 1-absent (Dutra).

Followed by a vote of the Water Resources Management Committee: **Motion** made by Mr. Schmitt to accept the recommendation of the Town Administrator. Second by Mr. Harkins. The Committee voted 4 in favor, 1-opposed (Burns).

Motion made by Mr. Sullivan that the Board of Selectmen designate the Water Resources Management Committee as the focus point group for all water-related grants pursued with the Town Administrator assisting as a supporting role. Second by Mr. Spirlet. Discussion ensued. Mr. King stated he will draft a model on this motion as to a process and bring it forward to the Board of Selectmen on October 6, 2014. Motion is withdrawn.

Motion made by Mr. Ouellette to adjourn the Board of Selectmen Meeting at 7:45 PM. Second by Mr. Spirlet. The Board voted 4 in favor, 1-absent (Dutra).

Motion made by Mr. Harkins to adjourn the Water Resources Management Committee meeting at 7:45 PM. Second by Mr. Burns. The Board voted 5 in favor, 4-absent (Walsh, Tripp, Barresi, May)

Adjournment.

Respectfully submitted,

Diane Pelland, Administrative Asst/Confidential Clerk
to the Board of Selectmen

APPROVED: _____
R. Michael Sullivan, Clerk