

## Minutes: Selectmen's Meeting – Monday, December 6, 2010

Present: Kevin W. Welch, Chairman and Walter F. Alterisio, Procurement Officer and Member; , Kenneth J. Leva, Clerk absent

Before the meeting was called to order Reverend Rich Woodward requested permission for use of the Town Common for Carols on the Common this Saturday night and thanked the Board for the use of the Town Hall for their adult classes on Sunday mornings.

Meeting was called to order at 7:02PM with quorum present. The Board met with Town Engineer Jeff Rider, Town Counsel Rich Larkin and Road Commissioners Michael Martin, Tom Dumont and David Crandall for dry run of the Route 113 – McGovern Wall project in preparation for next week's meeting with MA District 3 scheduled for 12:30PM next Tuesday afternoon.

Jeff did not have the drawings with him but reference was made to the 1<sup>st</sup> and 2<sup>nd</sup> sets – the original set which met most of the state's requirements and the 2<sup>nd</sup> set which incorporated the changes requested by Historical and Conservation Commissions. Selectman Alterisio noted the importance of having both sets of drawings available at the meeting so they can be viewed by all attending. Goal of that meeting is to basically come out with an agreement that compromises the positions of all so we can move ahead with the public hearing without comments being aired at the public hearing causing delays, etc. Chairman Welch inquired whether we're at a point now where the amendments have been incorporated – Jeff advised not as yet since he'd been put on hold - he indicated we need something addressing those comments in the plan. Jeff advised it wasn't possible at this point as there is a fair amount of work to do that. Mike confirmed that Jeff has the original, and the amended plan. Chairman Welch confirmed that Town Engineer could incorporate what the state requests, but Jeff indicated it couldn't happen before next week's meeting. Discussion continued on whether it could be done for the \$600K from the state – Jeff advised have 25% submittal, 75% & PS&E submittals which would include the plans, specifications and bidding documents. Jeff advised that all this going back and forth with NMCOG, DOT, PRC, etc. has taken a lot of time. Discussion continued on the votes taken on the state level and how it has affected the amount of time that Town Engineer had to spend on negotiating, coordinating submitting, etc. Selectman Alterisio indicated his big question was do we have to come up with more money- Jeff yes – how much was yet uncertain. Survey wasn't in the proposal. Selectman Alterisio advised he had a feeling we're going to get sliced and diced if we have to go back to town meeting to request additional funds for

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engineering costs. He noted that time frame has been adjusted so we have more time – but if we're going to need more money, may not be easy to sell to Town Meeting.

Mike and David indicated that if the state accepts the original plans, they couldn't see why we needed additional charges for the plans. Jeff advised he spent a lot of time trying to get the PRC approvals. When we submitted the 25%, wasn't even on the PRC list yet so project review committee wouldn't even look at the plans. Jeff was simply negotiating with the state, not necessarily dealing with design changes. Jeff advised they requested couple of different cost estimates, etc.

Selectman Alterisio explained the makeup, process and decisions of the project review committee and other state agencies so that Town Counsel and others could better understand the process so far and the relationship to the project's outcome and future. Selectman Alterisio noted it looked like we'll need to come up with some kind of number for the annual town meeting and submittal for June for project release in September. Chairman Welch cautioned, if the work is done, and doesn't approve additional \$\$ at Town Meeting, we could be in ominous position.

Mike confirmed the initial prints - @25% completion, must be brought to 100% to go out to bid – if no other revisions, could this keep going forward without any problems at all. He was attempting to confirm Town Engineer's cost were or had been covered – estimate he gave the town was to produce 100% for project. He advised 1<sup>st</sup> must make a formal 25% submittal to Boston, have to have approval, hearings, etc. David noted that in the minutes Tom stated approval of initial, confirmed by Town Engineer. Concerns over how to explain to the town's people that costs have gone over – just seems like the regular amount of work for this type of project. Jeff advised that town didn't follow normal procedure – were told we had a good project by state who indicated needed to get design in, but when paperwork flow got into bureaucracy got bogged down. Chairman Welch so state came in and told us there's money there, this is a good project but now are told stimulus money is gone – had to be in bucket in order to meet certain date and we didn't make it because the review process at the state level had passed, through no fault of ours. It was intended for projects that were all ready to move forward and the complication that at state level some of the funding was redirected to other uses. Transportation Review Committee – Dave to simplify, because we missed the stimulus money, now had to go through an extra step,

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which will result in additional design costs. Jeff-no regardless of the funding source, have to go before PRC, was under impression had already been approved by PRC, but that was not the case. PRC approves everything that goes onto the TIP and in order to get onto the tip is process that must be followed. Selectman Alterisio 2 issues need set of drawings that can be presented for approval and move forward – meeting next week will hopefully settle discrepancy and provide buy in from Historical and Conservation Commissions. As far as costs, the town has to come up with a strategy that allows the project to move forward – need to make decision that project is worth it, not something we can handle on our own without going out for a long term bond. Negotiating overages, and how to handle is something that officials aren't anxious about bringing back to Town Meeting. Jeff will work on putting something together so everyone will have a better idea. Next Tuesday, the 14<sup>th</sup> at 12:30 – Jeff will bring prints for the meeting so all can better understand the particulars. Jeff advised that Arthur Frost has already seen both sets of drawings.

Dana Barnes reported he'd visited the area of Brow property per Selectman Alterisio's request and noted there are 5 vehicles in the yard right now, one he's certain is unregistered but 4 have plates. One closest to the road has a rejection sticker on the windshield and another has none at all. Dana indicated three of them he has his doubts as to whether they're registered. The board reviewed the history of the project and recent events and the timeline for scheduling hearings, Selectman Alterisio advised that Brow called him before the 22<sup>nd</sup> and assured him that issue would be resolved by the 29<sup>th</sup>. Selectman Alterisio passed the area around the 29<sup>th</sup> and noticed that it hadn't been resolved but later that same day passed again and saw a wrecker hooking up to one of the vehicles. Dana indicated he can verify there is at least one unregistered vehicle and four with plates, whether they're current or expired is still uncertain. Board agreed that, while the iron is hot, they'd like to see if it can get resolved without hearing. Dana will investigate further and report back to the board.

Alan Chaney advised there's a small piece of town property up on Pond Street by the old town well, Alan's land is in L, right in the corner of the L is 1/16<sup>th</sup> of an acre with a well about 10-12' deep with water in it – that well was covered years and years ago – George Tully donated the lumber like 20 years ago to construct cover – now there are trees growing up out of it – it's an abandoned well and needs to be covered or filled before there's a tragedy. He indicated it's about 10' in diameter – needs to be either covered or filled and would be a shame

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to destroy it. Could have someone look at it and see what can be done. Alan – the other point is he's going to be doing some logging up there on his adjacent property, and would be happy to clear a path to provide access, would also be happy to have them take the skidder and knock the wall down for access. Well is town property and has been since the 19<sup>th</sup> century. They'll be in there this winter – like January and February. The Board will contact David Crandall to see what they can come up with for plan to cover. Alan advised the easiest cheapest way out probably would be to drop load of gravel over wall and take backhoe to level up to the well. He advised they used to use it for gravity feed livestock back many, many years ago but it hasn't been used for a long time, doesn't believe anyone will ever use the well again but hates to see it destroyed. Alan advised that about 45 years ago, the Chaney's tried to buy it but town turned it down and told him to just use the well but they stopped using it a long time ago – like 30 years ago.

Selectman Alterisio advised for the first time, he visited the Amos Kendall property looking at the trees and noted it was very obviously on what Henry was trying to accomplish there. Discussion continued on the gravel operations in town and judges decisions in the past.

Chairman Welch asked Rich his opinion on approval of Chapter 48 Section 59A and whether it would impose additional liabilities on the town if the board were to approve it. Rich provided background on this type of mutual aid and how the distinctions were made. He referenced so-called legal tests to determine distinction for each. Somewhere back a ways the Supreme Judicial Court announced the next time it came in front of them would abolish and put 258A in place which placed limited liabilities and immunity of liability on the responding individual. He explained how due care is evaluated and liability for omissions – liability ceiling of up to \$100K but questions whether could be multiple casualty clause was uncertain.

Rich, a Dunstable firefighter responding to a call outside the jurisdiction, it's iffy who they're working for, when they're serving aid outside the town. This statute is intended to give them the same kind of protection they'd have on duty in Town. Dunstable Selectmen's position is that we're not excited about volunteering to assist a remote location – say like North Hampton. Quite off hand, Rich can't see that whole idea of assisting town's off in distance made much sense, except in exceptional conditions. Secretary will check with MIIA to see if our rates would be affected, if the town were to sign this authorization.

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The board also addressed the question about status of Robert Bacon and maintaining legal status within conflict of interest law. Rich noted the purpose of the conflict of interest law is to prevent individuals from basically feathering their own nest. He referenced the David Tully Jr. decision, authorizing occasional service to Water Commission as needed. Rich reported on a number of decisions made by the Ethics Commission and inequality of determinations and how they might be pertinent. Rich advised by including the three responsibilities into one position. Rich advised that he would say unless the board thinks that by doing the two jobs it's putting the town in a liability. Selectman Alterisio indicated he felt it had to do with Kim being uncomfortable cutting a check from other departments. Rich advised as long as the town has under 3500 residents, Selectmen can determine that there is no issue and the Town would be covered. Kim will be asked about her original concerns and whether the Selectmen's decision would satisfy her reservations.

The Treasurer's Warrants were reviewed and signed; minutes will be held until next week.

Meeting adjourned at 8:32PM after appropriate motion and vote.

Respectfully submitted,

Danice N. Palumbo,  
Board Secretary