

REGULAR MEETING OF THE LITCHFIELD BOARD OF SELECTMEN
TUESDAY, OCTOBER 18, 2016
TOWN OFFICE BUILDING - 5:30 P.M.

Call to Order: First Selectman Leo Paul, Jr. called the meeting to order at 5:30 p.m. with all Selectmen present: Diane Knox, Jonathan Tarrant, Jeffrey Zullo and Paul Parsons.

Approval of Minutes: Motion: J. Tarrant moved to adopt the regular meeting minutes of 10/4/16 as presented, and D. Knox seconded. All voted aye except D. Knox, who abstained because of absence, and the motion carried.

Public Requests/Comments: Attorney James P. Steck said he was present only as a resource for funding for the injunction action.

Victoria Sansing spoke to remind everyone about all the previous studies that have been done on the Litchfield business district and urged the new committee to review the studies. She thinks people will still come to this living village as a destination. She asked that the new committee not damage the quality and beauty of the village and the green.

Frank Stack, 58 McBride Road, said he and his son have been shooting on his property since 2006, and his son still shoots there regularly for his own private enjoyment. He began having trouble with neighbor Bill Deering in 2014 when the road was being worked on and he gave the Town easements. He accused him of opening fire on his (Mr. Stack's) property. In ZBA action, the gun club rights were taken away, contrary to the Town's zoning official's opinion, although the Stacks still shoot on the property privately. There are three or four neighbors who still give him trouble. Mr. Paul said neighborly disputes are not the Board's concern. They are interested in the \$20,000 transfer and want to hear why the Town should or should not spend the money for the injunction. Mr. Stack said he is a taxpayer, has given easements to the Town, and does not want to see the Town spend money needlessly when he is well within his rights to shoot on his property.

Frank Stack (the son), 58 McBride Road, added that he has done nothing wrong and is being harassed.

Robert Siemon, 97 McBride Road, asked why the cease and desist was not upheld. Mr. Paul replied that that is a P&Z enforcement issue and not the authority of the Board of Selectmen.

Elizabeth Neil-Siemon, 97 McBride Road, said that a good percentage of what Mr. Stack said is not correct and is documented in P&Z. She said this is not a second amendment issue – it is a zoning issue.

Bill Deering, 110 McBride Road, said he never shot at Mr. Stack. He said the police never found any evidence for arrest. Regarding the pond, Mr. Stack has encroached 120 ft. into Mr. Deering's property, and that is why he asked Mr. Stack for legal fees.

Robert Siemon said a residential neighborhood is not the place for what has been going on. They have gone through the P&Z, the courts, and the cease and desist has not been upheld.

Mr. O'Carmel, 58 McBride Road, said the property became farm status although there are no crops, livestock or hay. With farm status it could not be used as a gun range as well.

Attorney Steck explained the sequence of events. The shooting range issue went to the ZBA, and it found the gun range had been abandoned. The decision was appealed to the Superior Court who affirmed the

decision. Dennis Tobin then issued the cease and desist order that they are seeking to enforce tonight. The appeal went to the Appellate Court and was again rejected. Then groups of people came from out of town and fired guns for hours a day, thousands of bullets, with video taken of a machine gun being fired. This prompted going to the P&Z, whereby they voted to pursue an injunction. He submitted a copy of a letter he submitted to the P&Z Commission.

Elizabeth Neil-Siemon, 97 McBride Road, added that her husband spoke to Mr. Stack who did not want to compromise.

Bill Deering said this is all in retaliation for Mr. Stack not getting a subdivision in 2012.

Selectmen's Requests: J. Torrant questioned the 10/5/16 BOE minutes and a motion that was made to approve the LED lights, when it was already approved in the spring. The minutes also stated that the bus lease was presented to the Board of Selectmen when it was not.

Resignations

a) Nicholas S. Fitzgerald from Litchfield Prevention Council, effective 9/28/16: Received and noted.

b) Gary Waugh from Board of Education, effective 11/1/16: Mr. Paul noted that the BOE has 30 days to appoint a replacement. If that does not happen, it falls to the Board of Selectmen to appoint.

Interviews, Appointments & Reappointments: None

Liaison Reports/Commission-Committee Minutes: 10/5/16 Board of Education minutes (draft); 10/12/16 Inland Wetlands minutes; 9/19/16 Special P&Z minutes; 9/6/16 ZBA minutes

Green Team Update: No report

Town Facilities Committee Update: No report

Vacancies: The list of current appointed vacancies with term expirations is as follows:

Bantam Lake Authority: 1 member 12/2016
Beautification Commission: 2 alternates 2/2019
Board of Ethics: 2 alternate members 6/2017, 6/2019
Cable TV Advisory Council: 1 member 6/2017
Capital Improvements Committee: 2 citizens at large
Conservation Commission: 1 regular members 12/2016; 2 alternate members 12/2018
Economic Development Commission: 2 alt. members 6/2018, 6/2017
Inland Wetlands: 1 alternate member 6/2017
Litchfield Prevention Council: 1 regular member 6/2018
Milton Historic District Commission: 2 alternate members 1/2018, 1/2018
Northwest CT Convention & Visitors Bureau: 1 member 9/2018
Park & Recreation: 1 regular member; 2 alternate members: 6/2017, 6/2018
Pension Commission: 1 alternate member 3/2019
Recycling Committee: 5 members: two 2/2016, one 2/2017, two 2/2018
Social Services Board: 1 member 2/2017
Veteran's Advisory Committee: 2 regular members 8/2016, 8/2018; 2 alternate members 8/2018
Water Pollution Control Authority: 1 alternate member 1/2016
Zoning Board of Appeals: 1 regular member 3/2021; 2 alternate members 3/2020

Tax Refunds: Motion: P. Parsons moved to approve the two tax refunds presented, for a total of \$146.40. J. Torrant seconded, all voted aye and the motion carried.

Transfers

a) **Transfer #4 - \$20,000 from Contingency to 01-1401-52105 Professional Service (Court Injunction):** Dennis Tobin, Land Use Administrator and Zoning Enforcement Officer, explained that the transfer is for \$20,000 for an injunction. He explained that he first issued a notice of decision that this was a pre-existing, non-conforming gun club. Mr. Paul questioned why he did this knowing that Mr. Stack had converted this property to a farm. He replied that he felt there was a pre-existing use and still feels that way. However, the Zoning Board of Appeals overturned his decision, so he issued the cease and desist order based on their decision. It then went to court and the judge said they supported ZBA. D. Tobin would like the \$20,000 for a court injunction to silence the gun range. He does, however, protect second amendment rights and tells Mr. Stack he is allowed to shoot. Because the noise continues, the neighbors went to P&Z and P&Z voted for the injunction. Mr. Paul asked D. Tobin why they need to go to a court injunction with a cease and desist in place and with him enforcing it. D. Tobin said there is no ordinance that addresses this. Under the zoning regulations, the next step for enforcement is to ask P&Z for an injunction. Mr. Zullo asked what the cease and desist referred to, and Dr. Tobin said "use of gun club and/or shooting range." Mr. Zullo then asked if there is any proof that a gun club is still operating. Dr. Tobin then answered with an analogy of a hot dog stand that was issued a cease and desist. The owner then gave the hot dogs away for free, but he still had a hot dog stand. Mr. Zullo then said it is clear that the Zoning Board has spoken and we have to support them.

Town Counsel Michael Rybak confirmed J. Torrant's question that the court action has to be complete (could be a year) before the stop action takes place. He asked if Atty. Byrne has given them any idea of success. He also asked if there was an opinion letter from Atty. Steven Byrne, because asking the court to enforce a cease and desist where there is strict scrutiny because they are working within the second amendment means they must be right. Mr. Paul said he did not agree with Dr. Tobin's decision to give Mr. Stack the opportunity to continue the gun club, but statutorily he had no choice; and now the neighbors have had to pay a lot of money to fight something that maybe the Town should have fought. He asked the amount recommended by Atty. Byrne be reduced so it does not have to wait for Town Meeting approval to move forward. He really wished this could go back to P&Z with the residents and attorneys together to figure it all out. However, at this point it is clear that cannot happen, and the Town must fund the action taken.

Town Counsel Michael Rybak said the Selectmen have the statutory authority to superintend the concerns of the Town, but they do not act as the Zoning Commission. They do, however, decide how much of a transfer request to ask of the Board of Finance. Further, there is no magic solution to this problem. It will take a year to try an injunction case for a severe public health or safety matter. Then there could be appeals beyond that. Mr. Paul said that just because there may be an injunction in place, it does not guarantee that there will be no shooting on Mr. Stack's property.

Motion: J. Zullo moved to approve budget transfer #4, reducing the amount requested from \$20,000 to \$15,000, to be taken from 01-1903-51703 Contingency and to go into 01-1401-52105 P&Z Professional Service account, then to be acted on by the Board of Finance. J. Torrant seconded the motion. Mr. Zullo asked if there is a limit to the number of people who can shoot on a property. Mr. Rybak said there is nothing in the Zoning Regulations that defines a gun shooting range. It will amount to a fact-driven analysis of concerted activity that constitutes a club that is not permitted in a residential zone without a special permit. D. Knox pointed out it is possible to recoup some of the costs, but Mr. Rybak said it is discretionary by the court. P. Parsons said the Board of Selectmen have no authority to give an opinion to the Zoning Board; it can only determine how much money to ask for. Upon voting all voted aye and the motion carried.

Old Business: None

New Business

a) **Establish West Street Revitalization Committee and Appoint Members:** Mr. Paul said they could appoint members tonight, but there is still no charge. J. Zullo said a good charge is key, and they should make the appointments when the charge is set. This is a Town-Borough committee, an interlocal effort per Mr. Paul. **Motion:** J. Zullo moved to table the West Street Revitalization Committee formation until Leo Paul and Lee Losee can put together a charge and list of candidates. J. Torrant seconded, and suggested designating a couple alternate members. Upon voting all voted aye and the motion carried.

b) **Approve Easement Agreement between The Connecticut Light and Power Company d/b/a Eversource Energy, Acting by its Agent, Eversource Energy Service Company and the Town of Litchfield Relocation of Bantam River Jambs; and Authorize the First Selectman to Execute All Necessary Documents:** Mr. Paul said that even though this was approved at Town Meeting, the Board of Selectmen now need to endorse approval so Mr. Paul can sign the easement.

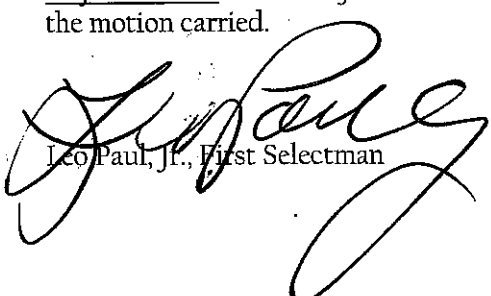
Motion: J. Torrant moved the approval of the easement as described above, and D. Knox seconded. Now this will go for approval in the Town of Morris, and there remain three more easements for us to complete. Upon voting, all voted aye and the motion carried.

c) **Approve the Discontinuance of an Unimproved Highway Known as "Buck Road" from Donahue Road Ext. Approximately 600 feet± northerly to its Terminus as Shown on Survey Map on File in the First Selectman's Office, Pursuant to CGS Sec. 13a-49; and Authorize the First Selectman to Execute All Necessary Documents:** Mr. Paul said once this vote is taken, certified letters will go to the adjoining property owners letting them know the road has been discontinued, and they will have 60 days to grieve.

Motion: Mr. Zullo moved to approve the discontinuance as described above and to waive the reading of the highway discontinuance for Buck Road. J. Torrant seconded the motion. Mr. Paul said that Mr. Rybak is working on an easement to provide the abutting neighbor and whoever buys the property from the Town a way to enter the property located where the current driveway is. This discontinuance has been approved by Town Meeting. Upon voting all voted aye and the motion carried. Two copies of "Notice of Highway Discontinuance" were signed and witnessed. One copy goes to the Town Clerk for signing, sealing and recording, and the other is for the Selectmen.

Correspondence: None

Adjournment: **Motion:** J. Torrant moved to adjourn at 6:41 p.m. and J. Zullo seconded. All voted aye and the motion carried.


Leo Paul, Jr., First Selectman