

November 1, 2010

**BOARD OF SELECTMEN
MINUTES
NOVEMBER 1, 2010**

Present: Thomas Creamer, Chairman
Mary Dowling
Mary Blanchard
Scott Garieri
Ted Goodwin
Shaun Suhoski, Town Administrator

The Chairman called the meeting to order at 6:30 p.m. following the Pledge of Allegiance.

T. Creamer presented a Certificate of Appreciation to Sgt. Michael Blanchard, who served the Sturbridge Police Department for eight years, and was recently appointed Chief of Police of the Town of Brookfield. On behalf of the Board, T. Creamer thanked Michael Blanchard for his outstanding dedication and service to the community, and extended gratitude and heartfelt wishes for his continued success as Brookfield's Police Chief. Michael Blanchard thanked the Board.

S. Suhoski said that the Police Dept. is seeking to appoint an Acting Detective Sergeant, as the Chief has expressed a need for more command staff.

MOTION: That the Board of Selectmen ratify the Town Administrator's appointment of Detective Mark Saloio to the position of Acting Detective Sergeant in the Police Department, effective November 2, 2010, by M. Blanchard.

2nd: T. Goodwin

Vote: All in favor.

Greg Morse, DPW Director – Monthly Report

G. Morse reviewed his report with the Board. He said that a sewer pipe had collapsed within ten feet of the existing manhole on Fairgrounds Road, at a depth of about 15 ½ feet. They dug it up, located the blockage and repaired the pipe. G. Morse expressed concern about the roof of the asbestos concrete pipe, and suggested that it be lined. He said that it would cost in the range of \$30 per foot for 250 feet.

M. Dowling thanked G. Morse for clearing up the scrap metal from Town Barn Road. G. Morse said that they had filled two large containers with the scrap, and the money for it will go to the Board of Health.

M. Dowling asked about the status of the Rt. 15 study report. S. Suhoski said that it came in, and suggested that the Board discuss it during the work session on November 8th.

Cremation Plot Fees

G. Morse said that a survey was conducted regarding cemeteries, which was submitted to the Board. He concluded that the fees charged by the Town of Sturbridge are where they should be.

S. Garieri asked what would happen if someone were to buy a regular full plot, and afterwards decided to use it for a cremation urn. G. Morse said that the person would pay for the full plot. He said that otherwise, they may run out of headstone space. He noted that a full plot could hold a maximum of three cremations.

MOTION: That the Board of Selectmen establish a fee of \$250 per cremation plot at North Cemetery, by M. Blanchard.

2nd: S. Garieri

Vote: All in favor.

Sidewalk Snow Removal

S. Suhoski submitted to the Board a memorandum dated October 28, 2010 concerning changes to liability of property owners for snow and ice injuries, together with a restatement of the measure of liability with respect to sidewalks and public ways. The Board also received a copy of a Memorandum to Municipal Clients generated by Town Counsel regarding Important Decision Addressing Snow and Ice Removal on Municipal Premises.

S. Garieri asked what it would cost to shovel the sidewalks. G. Morse gave a rough estimate of \$20,000/year. He noted that there will be some issues regarding snow removal this year, as the work on Route 131 is not finished. S. Garieri said that the Board should make sure that the state has made provisions to take care of it on Route 131. G. Morse said that the liability is with the contractor working on the project, since the road is under construction. He noted that the contractor is paying for insurance, and it is his liability. It was the consensus of the Board to get input from Town Counsel and the state.

G. Morse said that the DPW will continue to remove snow and ice from Town-owned parking areas and walkways to minimize potential for accidents and increase public convenience. The completion of the Center Office building and its walkways and parking area will require additional resources and time from DPW during storm events. He said that the policy for clearing snow from sidewalks must be consistent with the bylaw.

S. Suhoski read his October 28, 2010 memo to the Board of Selectmen into the record. He noted that the memorandum from Kopelman & Paige detailed the implications of a recent ruling by the Supreme Judicial Court (Papadopoulos v. Target Corporation) that property owners may now be held liable for snow and ice injuries, whether such injuries result from the natural accumulation of snow or ice or from ineffective snow or ice removal. He noted that the Papadopoulos case does increase liability exposure due to snow or ice upon the walkways and parking areas of Town-owned properties, but does not change existing snow and ice removal liability with respect to public ways or sidewalks.

S. Suhoski said that the Town makes a diligent effort to remove snow, and the Town is protected by MIIA insurance. The bylaw states in Section 6.50: "Any tenant or owner occupying any building or any lot of land abutting on a sidewalk, which is situated within the limits of the highways or town ways, and in case such building or lands are unoccupied, the owner or owners thereof shall cause all snow and ice to be removed from such walk within 24 hours after the same shall have accumulated thereon."

M. Dowling asked when the bylaw had been adopted, and at what point did the Town stop enforcing it. G. Morse said that it dated back to 1988, and the vote was changed in 1996, as the Building Inspector did not want to enforce it. T. Creamer said that over the last 20 years the Town assumed the responsibility of Route 20. M. Blanchard said that it was the policy of the Board of Selectmen at that time because of the commercial tourist district. S. Garieri said that the Town had no authority to waive enforcement of the Bylaw and that Bylaws need to be enforced by the Town. He stated that he had raised this issue before, and that it was time to enforce the Bylaw.

T. Creamer noted that G. Morse had come before the Board last year to ask about the policy regarding sidewalk snow removal, and that the Board voted to continue a long-standing practice of keeping sidewalks accessible in the business district. He noted that the vast majority of business owners on Rt. 20 are renters with absentee landlords. Since it is in the business district, he believed it is necessary to maintain safe and secure passage for residents, tourists, and merchants in support of local commerce. T. Creamer then asked if the figures cited by G. Morse relative to cost were based upon a detailed review or a guess. G. Morse stated that it was his estimate, but that there was no way to truly quantify the cost.

S. Suhoski said that MGL Chapter 40U is a local acceptance statute which would allow the Board to impose higher level fines, as outlined in the Kopelman & Paige memorandum. M. Dowling asked how the Town would inform the owners of commercial property about enforcement of the bylaw. S. Suhoski said that using the Assessor list, notices could be mailed out to them.

T. Creamer said that he would support G. Morse's recommendation, contingent upon the fact that the Town Administrator is going to ensure that this bylaw is enforced in a fair and equitable manner, unlike the current Sign Bylaw enforcement, which T. Creamer viewed as arbitrary and capricious in terms of enforcement. He indicated that though he did not agree with the departure from the past 15 year policy, he would support the DPW Director's request due to the increase in the scope of sidewalks along Rt. 131, the possibility of reduced funding due to Question 3, and his desire to maintain consistency with another issue that the Board would be discussing that evening relative to enforcement of the Sign Bylaws.

S. Garieri said that today, when money must be cut from budgets and departments, G. Morse will have to allot \$20,000 to plow private sidewalks. He noted that every new development is required to have sidewalks. He asked where the Town was going to draw the line. T. Creamer said that with the possibility of State funding reductions – should Question 3 pass – the Town would then find itself in a position to where service cuts across the board would be necessary, and that perhaps it was prudent to begin here.

M. Dowling said that she did not think that the Board had the authority to change the bylaw under the guise of policy. She noted that if the bylaw is not enforced and someone gets hurt, the plaintiff's attorney will go after the Town. She cautioned the Board to be careful.

T. Goodwin said that if the Town does not have the resources to enforce the bylaw and sidewalks are not plowed, the Town must see how the commercial district complies with it. He asked whether there was a way for landowners in the commercial district to pay the Town a certain fee for each snowstorm. G. Morse said that the Town has an agreement with the state that the state installs the sidewalks, provided that the Town signs a maintenance agreement, and the issue is how to handle the maintenance agreement. T. Creamer said that the discussion is about snow clearance, not fixing cracks in the sidewalks. G. Morse said that the maintenance agreement with the state is regulated by the bylaw regarding ice and snow removal, weed control and other maintenance by the Town of Sturbridge.

M. Dowling suggested bringing it before the people at Town Meeting. She noted that it is a different situation when taking a vote to make a policy that changes a bylaw. S. Suhoski recommended that the bylaw be enforced to reduce the Town's exposure and reduce the workload on the DPW. He said that when the Board makes a policy vote to direct DPW to clear an area, it is not changing the bylaw at all, it is giving a work directive to a Town department. M. Dowling said that businesses must be given a clear directive that they are either responsible for clearing snow from sidewalks because of the bylaw, or they are not. G. Morse said that it needs to be defined and corrected. T. Creamer said that if a particular area is to be exempt, it should be stated in the bylaw.

S. Garieri said that when the bylaw first came into effect, Route 20 was the only sidewalk in Town; today sidewalks have expanded extensively. He asked about the possibility of utilizing the Senior Municipal Service Program to distribute information to the public. T. Creamer said that letters should be sent via certified mail, return receipt requested. M. Blanchard agreed, and said that to use the senior program, it would be necessary to have people apply for it, then appoint them, which would take time.

T. Goodwin suggested making this change for the first of the year, which would provide a clear delineation. T. Creamer suggested putting all changes in fees and fines on hold until January 1, 2011. G. Morse said that he would accept January 1, 2011 as the initiation date.

M. Dowling suggested the possibility of putting an article on the next Town Meeting warrant that would differentiate between the commercial tourist area and residential area. It was the consensus of the Board.

MOTION: That the Board maintain the policy of taking care of sidewalks on Route 20 until January 1, 2011, by M. Blanchard.

2nd: S. Garieri

Vote: All in favor.

T. Creamer asked S. Suhoski to draft a letter for the Board's approval by the next meeting.

420 Main Street Group, Inc. – Change of Manager

S. Suhoski informed the Board that the 420 Main Street Group, Inc. was seeking to change managers, stock allocation and officers. M. Blanchard noted that originally the application was just for change of manager, but new officer/director and transfer of stock would require a legal notice in the newspaper.

S. Suhoski said that their attorney had explained that there is no requirement for a public hearing as they have never issued stock. They requested that the matter be postponed until November 15th so that they could be present to explain the situation to the Board's satisfaction.

S. Garieri said that he has filed a disclosure with the Town Clerk and the Ethics Commission, as Attorney Marino had represented him in a previous lawsuit, and there is no conflict of interest.

The consensus of the Board was to address the matter on November 15th.

Charter Review Committee

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S. Suhoski submitted to the Board a memorandum dated October 26, 2010 identifying 12 interested applicants. He noted that the Town Charter imposes no limitations on the number or composition of the committee.

T. Creamer said that the Charter Review Committee is a special committee in that it has one function: to review the Town Charter. He noted that it is an advisory committee. M. Blanchard said that she would like to review the letters of interest.

T. Creamer suggested that the Board consider the following methods:

1) Each member of the Board of Selectmen would list their choice of five applicants; 2) Each member of the Board of Selectmen would nominate an individual; a 2nd to the nomination would not be required; at the end of those five nominations, they could approve the slate of nominations, or nominate additional individuals; 3) The committee is appointed by the Chairman of the Board of Selectmen. It was the consensus of the Board to use the 2nd suggestion.

Regarding the size of the committee, M. Dowling suggested making it larger rather than smaller, to ensure that a fair cross-section of the community is represented. T. Creamer said that if one member of the committee resigns, there would be an alternate (who would have been attending all of the meetings) who could step in. The consensus of the Board was that the Charter Review Committee would have five members.

MOTION: That each member of the Board of Selectmen nominates one person; at the end of those five nominations, the Board could approve the slate of nominations, or nominate additional individuals, by M. Blanchard.

2nd: T. Goodwin

Vote All in favor.

MOTION: That the size of the Charter Review Committee be five persons, by M. Blanchard.

2nd: S. Garieri

Vote: Four in favor; M. Dowling opposed.

Sign Bylaw Review, Education and Enforcement

S. Suhoski submitted to the Board correspondence dated Oct. 26, 2010 from the Town Planner indicated the Planning Board's commitment to undertake a review of the issue of signage in a thorough manner after completion of the Master Plan, with an estimated completion timely for the 2012 Annual Town Meeting. During the interim, the Building Inspector will schedule a second informational meeting for all interested business owners and residents that will be held prior to the Board's November 18 meeting. This informational meeting will seek further input from parties on the issue of illegal signage, and will serve to advise all

businesses and the general public that more stringent enforcement of the existing bylaw will commence effective January 1, 2011. He said that he and David Lindberg, Building Inspector, both feel that the January 1st date is appropriate in terms of making the business community aware of the heightened level of enforcement, and to allow staff sufficient time to prepare for the additional paperwork and workflow that will inevitably result from increased enforcement.

M. Blanchard noted that the situation has been going on for a long time, and some of the business owners who are in violation of the bylaw may not show up at the meetings. S. Suhoski said that he and D. Lindberg have been discussing the distribution of leaflets door to door to advise business owners of the meetings.

M. Dowling said that the temporary sign bylaw was passed a year ago at Town Meeting, and was embraced by the business community. She noted that there had been a lot of support for it. S. Garieri noted that there had been input from the Economic Development Committee on that, and the EDC had contacted a lot of the businesses with a questionnaire. He noted that many business owners are not familiar with how things work, and were nervous about filling out the questionnaire. He said that there had been a lot of questions about the bylaw. He said that D. Lindberg had engaged a lot of the merchants, and now they are more willing to speak up and be heard as to the effects of the temporary sign bylaw on their businesses. T. Creamer said that he was the Chairman of the Planning Board when this matter had come up, and provided the Board of Selectmen with a history of the bylaw dating back to 2008. T. Creamer read from the Planning Board's minutes, which reflected strong support for the Temporary Sign Bylaw, from the EDC (who actually wrote the draft) and from local businesses. T. Creamer noted as well that the minutes reflected that S. Garieri was very supportive of the changes to the Temporary Sign Bylaw, and had expressed his gratitude to the Planning Board for accepting and supporting the changes. He noted that the biggest complaint relative to the temporary signs was frustration due to the lack of uniform enforcement.

S. Suhoski reported that the Building Inspector has gone to certain businesses where there have been repeated complaints. He pointed out the need to develop a matrix to ensure that it is being handled consistently. He said that the Building Inspector felt that January 1st would be an appropriate period of time in which to develop a method to track enforcement, so that the bylaw is equally enforced. T. Creamer suggested the use of an electronic calendar.

S. Garieri said that two years ago the Board had given a temporary sign holiday; now the business climate is much worse. T. Creamer said that the sign holiday was a pilot for the current bylaw, which was subsequently approved by the 2/3rds required vote at Town Meeting 2009, which T. Creamer also supported. He noted that the bylaw had been drafted based on what the business community wanted, as supported and conveyed by the EDC and business leaders from

within the community, including Mr. Garieri himself. T. Goodwin said that he wanted the business community to know that these are the standards that they must meet. He said that it is important that people know about the sign bylaw before they purchase a sign, then find out it is not in compliance.

It was the consensus of the Board that on January 1, 2011 the Board expects to see enforcement of the sign bylaw.

Spaho Corp. Land Donation Update

M. Blanchard recused herself from the Board.

S. Suhoski informed the Board that in 2007 the Planning Board assented to holding a lot (4 Regep Lane) in lieu of a surety bond to bind the developer to complete all requirements of the subdivision approval, including final paving of roadways, drainage and other items. At that time, the developer estimated final work items to be \$50,000 and the value of the lot to be \$125,000. The DPW Director did not agree on the lot's value at that time. Today, the value of the lot held as surety is estimated to be \$70,000 as indicated by the Principal Assessor. Likewise, the cost of incomplete items would rise by three years' worth of inflation. S. Suhoski recommended that the Board hold off on accepting the required donated parcels of land until such time as the subdivision is accepted as complete by the Planning Board. He said that the Board's role is whether or not to assent to the acceptance of the gift of land by the Conservation Commission. He said that the minutes of the Conservation Commission's last meeting are not yet complete; however, the Conservation Agent had provided him with the following language of vote from her notes on the October 21st meeting:

"Moved by EG, seconded by DB that the Commission formally accepts the gift of land for the Spaho subdivision open space parcels conditioned upon the land being formally accepted after final approval by the Planning Board and DPW that the subdivision is complete. Vote 5/0."

S. Suhoski said that the Board should decide whether to ratify the Conservation Commission's actions (i.e. accept the gift of land after final approval of the Planning Board and DPW), or to hold off on any formal action at this time.

T. Creamer said that the Planning Board had required a certain amount of open space on this parcel. He noted that there had been an attempt to get Opacum Land Trust to take care and custody of the property, but they were not able to come up with an agreement.

S. Suhoski said that Walter Regep had indicated that the lot has depreciated a little bit, and he does not want to spend any more money to have his engineer go down there again. He will hold off.

T. Creamer noted that the Planning Board's practice, and DPW's practice has been never to accept any land until the project is completed and approved by DPW and the Planning Board, and at Town Meeting. The consensus of the Board was to take no action.

M. Blanchard rejoined the Board.

USDA Loan Document Ratification

MOTION: That the Board ratify the Loan Resolution dated September 13, 2010 in the amount of \$2,178,500.00 for the Well No. 4 project, and to authorize the Town Administrator's execution of same, by M. Blanchard.

2nd: T. Goodwin

Vote: All in favor.

Legal Cost Update

S. Suhoski submitted to the Board a summary sheet from a spreadsheet he had developed to better track the Town's legal expenditures by category. He noted that this database will need to be build this year, but in the ensuing years will also provide a year-to-year comparison of costs. He said that currently the legal budget is nearly exactly on target at the 25 percent expensed at the end of Quarter 1 (\$19,993). He said that expenses would be approximately half, but for costs associated with the Board of Health appeal of the landfill permit and attorney's fees and 50 percent of the arbitrator's invoice for a union matter. He had told Town Counsel not to pursue work unless approved by him in advance, or by Board of Selectmen directive.

Town Administrator Goals and Objectives

S. Suhoski said that there were 16 goals, which have not been prioritized. He said that regarding #10 (IT technology support personnel), he asked for more time (another 20 days) and technical assistance. T. Creamer asked the Board for their thoughts. M. Blanchard was in favor of extending the timeline. T. Creamer said that the Board would be willing to put it off to the June Town Meeting, and extend it to August 1, 2011. He said that S. Suhoski should submit an update to the Board by March 1, 2011.

S. Suhoski said that regarding #14 (to work with the Board of Health to ensure that the Southbridge Landfill's modified permit to increase MSW to its facility does not adversely impact public health, safety and welfare), he suggested that the modified permit is enforced to mitigate. T. Creamer said that S. Suhoski should make sure that the permit is enforced to the best of his ability.

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S. Suhoski said that regarding #16 (study the potential benefits of initiating Town-based maintenance of all Town-owned buildings and provide a detailed written report to the Board within the next 120 days), he said that the ideas don't need to be stated in the goal itself, and he felt that it was too directive.

T. Creamer suggested removing numbers 1, 2, 3 and 4 and leaving the rest in place. M. Blanchard suggested removing #15c.

MOTION: That the Board adopt the Town Administrator Goals as presented on the copy dated 11/1/10 as amended, by M. Blanchard.

2nd: T. Goodwin

Vote: All in favor.

Old Business

M. Blanchard thanked the Sturbridge Fire Dept. and Lions Club for the Halloween parade and event on the Town Common.

M. Blanchard asked whether S. Suhoski had gotten the language from the Trails Committee regarding the question of whether they can appoint their own members. S. Suhoski said that he had sent revised documents to the Trails Committee for their review, to be returned to the Board for ratification.

M. Dowling reminded everyone to vote.

T. Creamer asked about the status of variance submissions, and said that there seems to be a disagreement regarding the difficulty in obtaining a variance. He said that a member of the press had spoken to the Board regarding variances and handicapped issues. He noted that the Board has asked for a report on a number of occasions.

T. Creamer asked whether S. Suhoski had sent a letter to Mass. DOT about Route 20. S. Suhoski said that he had spoken with G. Morse about the Board's concerns to get his input. He said that he was going to address the issues that the structures appear to be low, the seaming in the pavement is uneven, and there is waviness in the pavement. T. Creamer suggested he tell them that residents have raised concerns and the Board of Selectmen has concerns that need to be brought to their attention.

T. Creamer said that at the next meeting he will ask about the PLAC Appendix A mission statement, and noted that there has been some concern about whether future members of the PLAC would know exactly what #4 meant. He said that the PLAC expressed concern about another group in the future extending its authority beyond the intent, so they set up some parameters.

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S. Garieri suggested the possibility of the entire meeting packets being sent to the Board electronically, and that it would be easier and more cost effective, and would save paper. M. Blanchard said that she found hard copies easier to work with. T. Goodwin said that he would prefer the electronic version. T. Creamer suggested purchasing a high speed scanner for that purpose. S. Suhoski noted that there would be a cost to link it to the software network. M. Dowling commented that she prefers hard copies.

M. Blanchard noted that the parking ban during snowstorms begins November 15th.

T. Creamer noted that the Town has received the Tree City Award for 20+ years in a row.

S. Suhoski noted that there had been an eggs and toilet paper incident over the weekend, and the Police Department had contacted DPW to clean it up. He thanked the staff for their efforts.

S. Suhoski said that Judy Knowles had discovered that the camera had been set at a different speed setting, which explained why meetings were not able to fit on a single DVD for broadcasting purposes. The necessary adjustment was made to fix the problem.

MOTION: To convene in executive session under MGL Ch. 30A, §21, Paragraph #3: To discuss strategy with respect to collective bargaining or litigation; not to reconvene in open session, by M. Blanchard.

2nd: S. Garieri

Roll call vote: M. Dowling in favor; T. Creamer in favor; T. Goodwin in favor; S. Garieri in favor; M. Blanchard in favor.

Respectfully submitted,

Judy Knowles

BOS Clerk

Date