

May 16, 2011

**BOARD OF SELECTMEN
MINUTES
MAY 16, 2011**

Present: Thomas Creamer, Chairman
Mary Dowling
Mary Blanchard
Angeline Ellison
Priscilla Gimas
Shaun Suhoski, Town Administrator

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

T. Creamer extended thoughts and prayers to the family and friends of Fran Simanski, who recently passed. M. Blanchard commented that she had known Fran Simanski to be a very erudite, well spoken, conscientious person who was committed to working for the community, and he will be greatly missed.

T. Creamer announced that the Stourbridge, England Rotarians had presented the Town of Sturbridge with a gift through the Sturbridge Rotarians, and invited the residents to come to Town Hall to view the magnificent map, which has been hung next to the safe in the Town Clerk's office.

T. Creamer announced that a member of the press was recording the meeting.

Thomas Hopkins, Mass. Architectural Access Board

Thomas Hopkins, Executive Director of the Mass. Architectural Access Board, appeared before the Board to discuss the variance process and AAB regulations. T. Hopkins said that he had come to see how to resolve the access issue in the front of Town Hall. He provided the Board with a packet of information which included a series of variance applications or notices of action which indicate five different locations where people had come forward seeking relief regarding an access issue to a building. He noted that these had been granted without a hearing. T. Creamer said that they were for Providence Town Hall, Palmer Senior Center, Joe Teski's Restaurant in Boston, Wrentham District Courthouse, and the Clapp Memorial Library, and noted that four of them were municipally based. T. Hopkins said that one of them was also for a new park in the Town of Nantucket, where they were creating a new park on Main Street. He said that one application was for access with stairs, another for access with a ramp. Because it was new construction, both entrances had to comply, so they came to the Mass. Architectural Access Board for a variance, which was granted as requested, without the need for a hearing.

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T. Hopkins said that on the average, the Mass. AAB receives 30 variance requests per month; of those, about 18-20 are granted without the need for a hearing because the merits of the application warrant granting it. He said that the two main reasons are excessive cost without substantial benefit to persons with disabilities, and another would be for historical significance. He said that it is clear that Sturbridge Town Hall has historical elements.

T. Hopkins said that the other three packets of information included the Center Town Hall in Chelmsford, one for the North Town Hall in Chelmsford were both before the AAB with multiple requests, that were all granted at a hearing. He said that one of those requests was for the main entrance to the building. They had argued excessive cost without substantial benefit, and the historical aspect in their variance request. He provided the Board with the written decision of the AAB that resulted from that hearing.

T. Hopkins said that the last packet was a variance requested for a church in Somerville, which had significant monumental stairs in front of it, with parking adjacent to it. He noted that what he sees in Sturbridge Town Hall is very similar to that, in that a new entry has been created. He noted that some citizens still want to use the main front entrance. He said that in this project, the spending exceeded 30% of the assessed value at the time the project took place. He said that the ADA addresses entrances, and states that 50% of the entrances must comply.

T. Creamer pointed out that the ADA requires 50% of the entrances to comply, not 100%. He said that misinformation had been provided to the Board about the ADA requirements. T. Hopkins said that a lot of people read it like it's a building code, but it's not, and it's not within the jurisdictional authority of the local building official or state building official to enforce the ADA. He added that the ADA is enforced by compliance to the Justice Department or as a result of lawsuits filed in federal court alleging that civil rights have been violated. He informed the Board that the Architectural Access Board has been in existence since 1968, and has been writing a building code that controls handicapped access over 40 years in the Commonwealth of Massachusetts. He said that it is the jurisdictional authority of every building official in the state to enforce that code, and when they see that something is not right according the §21 CMR, they can encourage the contractor or the architect to seek variances, such as in the case of Sturbridge Town Hall. He noted that Town Hall needs a variance from the Architectural Access Board because the use of the front door has been reserved for employees only, but he didn't think there was an affidavit stating that. T. Creamer confirmed that there was no formal affidavit. T. Hopkins said that architects give an affidavit to the building official at the time he applies for permits for the project, which he will stamp with his seal and swears under pains and penalties of perjury that the project will comply with all state and federal laws. He noted that the affidavit he was referring to is an affidavit that the Access Board has accepted in the past in lieu of a variance when a town (or private entity)

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wants to limit an entrance to employee use only; the public is not allowed to use it. He said that had the Town issued an affidavit stating: "This front entrance is for employees only," and allowed that use only, a variance would not be needed. The reason is that the Access Board doesn't have jurisdiction over employee areas as a building code as of yet. He noted that a safety issue exists regarding people having to walk down the street to enter Town Hall through the rear entrance. He noted that it would be easy to build an application.

T. Creamer said that it would seem that there is nothing daunting in putting an application together based on the fact that different templates are supplied to do it in short order. He noted that an applicant would not need a law degree to do it.

T. Hopkins said that they are in the process of building a scan system and eventually they hope to be able to put all of their records on line, so that they are readable and searchable by city and town, by section number of the code, etc. M. Dowling noted that he had provided examples of other towns that had pursued a similar variance, and asked whether they had gone forward on their own, or whether they had legal representation. T. Hopkins said that some Town Managers had asked for the variances, some members of a building committee have asked for variances, and building officials have submitted them. He said that for a project of this magnitude, he would assume that the architectural firm would ask for the variance.

M. Dowling said that the Board had received information from Town Counsel that there was only a 50% chance of likelihood of success on getting this particular variance. T. Hopkins said that no one knows how an issue will be resolved until they ask. He said that the AAB has denied variances where people have not done their homework and not really looked at the options for accessibility; and perhaps in those instances, they had not provided any access at all, but that is not the case at Sturbridge Town Hall.

M. Dowling said that there was an email from the architect stating: "I also warn you that a rejection of an application for a variance from the AAB may include a directive to make other changes that are not anticipated; in other words, there may be no going back to the exit only scenario without a hearing with legal representation, assuming you are successful in such an endeavor." She said that it seemed as though there was a penalty associated with trying to seek a variance; and then being denied by the AAB, being told that it is necessary to do additional things.

T. Hopkins said that the project was over 30%, and the architect had an obligation to ensure that the building fully complied with 521 CMR, and all other aspects. He did not think that Sturbridge would face the risk of ADA litigation, because Town Hall meets the compliance standard of 50% of the entrances being handicapped accessible. He said that the Town is at risk right now of not

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having filed an affidavit with the AAB on the entrance, and the resolution is in applying for the variance.

T. Creamer said that in citing the article written by Kevin Flanders of the Southbridge Evening News on November 2, 2010, there was a quote attributed to the architect which read: "We advise the Building Committee that based on our experience, the AAB has been moving away from allowing variances for historical entrances on buildings, even when they are supported with letters from the local Historic Commissions and the Massachusetts Historical Commission."

T. Hopkins said that in the examples he had provided to the Board, the Provincetown Town Hall, an extremely historical building, in 521 CMR, §3.9, in the jurisdictional range of how the code is triggered, 3.9 addresses historical buildings. It says: "If you are going to make a historical argument to us, we require a letter from the Mass. Historical Commission." However, the Board is pretty savvy, and is made up of architects, engineers, building officials, people with advocates, people with disabilities who are advocates, and it is not uncommon that Historical Commissions write to them. He noted that they speak to the value of their buildings, and that has just as much impact on the AAB members in the decision making process. He noted that some towns have an ADA Coordinator who may also weigh in on this. He said that if it is granted as an incoming case, if no one appeals it within 30 days, then it is a final decision.

T. Creamer said that it would be fair to say that the AAB has not been moving away from granting variances based upon historical reasons. T. Hopkins said that it wouldn't be possible, as Massachusetts is a very historic place. He noted that many historic buildings are being brought back for re-use and being modernized.

M. Dowling suggested moving forward with the variance. T. Hopkins said that the AAB reviews draft applications via email. T. Creamer emphasized that T. Hopkins met with the Board of Selectmen because he proactively sought out the officials from the Town of Sturbridge because of his concerns specific to the level of inaccurate information that the Board had been receiving, which had been reported to him. He noted that the AAB is in the business of trying to serve the needs of communities that have legitimate reasons for seeking variances. He said that the Board had relied upon the professionals to provide guidance and input, and had failed in not asking appropriate questions.

Each member of the Board thanked T. Hopkins for coming in to provide information.

M. Dowling said that in the interim, while the application is being filled out, the front door is open for employee use only, which is incorrect (absent an affidavit). She said that technically the door should be closed until the decision of the AAB has been rendered. T. Hopkins said that was correct, and noted that their meeting dates are posted on the Department of Public Safety website. They

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require that an application be submitted two weeks prior to a meeting date, and their next meeting was scheduled for May 23, 2011. He suggested that S. Suhoski write to the AAB and explain what has happened and ask the AAB to allow the Town to open the front entrance for public use until they have adjudicated the variance.

MOTION: To direct the Town Administrator to close the Town Hall front door pending either a letter to the AAB requesting that they be open for public use pending our application with the AAB, or until the application is filed, whichever comes first, by M. Dowling.

2nd: M. Blanchard

Vote: All in favor.

M. Dowling noted that there is a similar situation at the Center Office Building. T. Creamer said that the \$5.2 million figure included both buildings, Town Hall and the Center Office. T. Hopkins asked whether anyone had done an analysis of the breakdown of what was done on each building against the assessed value at the time the permit was issued. S. Suhoski said that both buildings exceeded 30%. T. Hopkins said that at the time the permit was issued, the Assessor had a building value less the land value; if the spending on each building exceeded that assessed building value by 30%, then it triggers full compliance for both buildings. He said that a variance may be needed for the Center Office building.

M. Dowling said that at the Center Office Building the main entrance is in the back, and the front doors do not have handles. She suggested getting a variance for that building as well. T. Creamer said that he had mentioned to the Town Administrator that he has significant concerns about the fact that there are no handles on the front door of the Center Office Building, because as he was leaving that building one night after a meeting, after he walked out he realized he had forgotten something inside but was unable to re-enter the building from the front. He pointed out that in a situation where the building had to be evacuated and someone was looking for a handle in low visibility to try to hold the door open for people, he would be reaching for a handle that wasn't there. He stressed the importance of getting that addressed.

T. Hopkins said that the two variance applications should be done separately. He thanked the Board for giving him the opportunity to address them, and wished them success with the AAB.

S. Suhoski said that it was good to hear that the variance process is not as daunting as they had previously thought. He said that he had been to the AAB website, and talked to a member of their staff regarding the filing process for a variance. He said that the Board has seen a draft variance application that he had put together, along with a narrative from the Building Inspector, and it was the fear of having it denied that caused them to stop in getting input from the

architect and Town Counsel. He asked what would happen if the variance is denied. T. Hopkins said that the AAB may order compliance; they may give the Town an option, such as closing the entrance or providing an affidavit relative to employee use.

T. Creamer asked what the Board's approach would be on the matter. He noted that there is a time window if the Board wanted to get on the docket for the AAB's first meeting in July. He asked whether the Board was comfortable with the information that they had received, and if they were ready to direct the Town Administrator to undertake this immediately and for this to become a priority.

MOTION: That the Board direct the Town Administrator, as his #1 priority in the next few weeks, to fill out the application for a variance to the AAB for the front doors on Town Hall; and to have a deadline for the Town Administrator to provide this to the Board of Selectmen no later than the first meeting in June (June 6th), by M. Blanchard.

2nd: A. Ellison

Vote: All in favor.

MOTION: To direct the Town Administrator to send a brief letter or email no later than Wednesday, May 18th requesting that the AAB allow Sturbridge to open the front doors for general public use, pending our application to the AAB for a variance, by M. Dowling.

2nd: A. Ellison

Vote: All in favor.

Discussion re: Walker Road

Jeff Langevin, 258 Walker Road, appeared before the Board to discuss the citizens' request for road improvements. S. Suhoski had provided to the Board a copy of the DPW Director's initial response.

J. Langevin said that he had spoken with a Town official about two years ago about the condition of Walker Road, but did not get very far with him. He started a petition with the residents of Walker Road, then forwarded it to the Town Administrator. He approached T. Creamer regarding the next step, and was given a date and time to meet with the Board of Selectmen. He provided photos of the road for the Board's review.

T. Creamer said that he had driven out to Walker Road to take a look at it. The Board questioned why it had taken such a long time to react to the petition and the people on Walker Road. S. Suhoski apologized for the delay. He noted that it had been established that Walker Road is a public road, not a private road.

J. Langevin said that during heavy rains and through the winter the road becomes washed out. He said that every year DPW dumps sand on the road, grades it and that fixes the road until the next rainstorm. When it rains, the road washes away into the wetlands at Wells State Park. He noted that it pitches down to New Boston Road. During rainstorms there is debris going across New Boston Road, causing people to hydroplane and creating a safety issue. He noted that there had been an incident with an emergency vehicle having difficulty getting down the road to respond to an emergency involving a child. He requested that the Board discuss a plan to rectify these problems.

J. Langevin noted that Walker Road is a short road, so that costs would not be high. He said that drainage work needs to be done, involving digging and paving. He mentioned that Chapter 90 funds have been increased, so there should be increased aid for road projects. T. Creamer said that regarding Chapter 90 funds, the apportionment coming to Sturbridge in FY12 is \$435,306, in addition to what funds already exist which have not been exhausted, approximately \$1.25 - \$1.5 million.

M. Dowling asked J. Langevin to elaborate on the incident with an emergency vehicle. J. Langevin said that following snowstorms, the snow gets packed in so that only one car can get through. The ambulance had a difficult time getting down the road and the driveway, so they had to back all of the way out of the road, turn around and back into the road again to get to the residence. M. Dowling commented that the situation is unacceptable from a safety standpoint.

M. Blanchard noted that there are problems with several roads in Town, and there is no road program yet. She said that when this issue came to the Board, the Board had made sure that S. Suhoski forwarded it to Greg Morse, DPW Director, so that G. Morse would be fully aware of it and would address it.

A. Ellison requested clarification. J. Langevin said that before a road is paved, there needs to be drainage work done because of erosion, and the infrastructure of the road needs to be repaired. A. Ellison suggested they consider alternatives such as gravel. J. Langevin said that they would be open to that.

Dan Widen, 239 Walker Road, said that he lives near the bottom of the hill, and noted that there is a big change in elevation, which is a big problem. He stressed the need to take care of the drainage, and said that as the water runs down the hill it causes ruts in the road.

T. Creamer suggested that the Conservation Agent take a look at the road to get an idea of how much of the water or silt is actually getting into the wetlands, which would be a violation of the Wetlands Protection Act. Erin Jacque, Conservation Agent, said that she had seen the site the previous week with the Director of DEP. She said that an Enforcement Order had been issued to the DPW, and emergency certification issued to the DPW on this issue. She said

that the stream and drainage channel has become clogged with road material, and at the present time the wetlands are completely filled in with all kinds of sediment and the channel which carries the stream from the upper slope down had to be dredged out by the DPW because it was so clogged with sediment. She noted that the issue is with the entire subdivision, which had been constructed prior to the state stormwater laws. She said that the subdivision relies on swales that run along the sides of the road, and leaves and twigs get into the drainage swales and clog the culverts that convey the water, resulting in a huge amount of overland flow, which goes down the slope, through the woods and toward Walker Road. She said that the drainage structure can't handle the capacity of water that is coming down the hill, and it splits, some going under the driveway, and some comes out into the roadway, carving out channels and washing out the road. She said that funds have been requested for a drainage study to address these issues. S. Suhoski said that a study has been approved for Walker Pond.

P. Gimas noted that Walker Road looks narrow, and asked if there was another way for residents to get in and out of there temporarily during reconstruction. J. Langevin said that traffic during the day is at a minimum, and they would make provisions while the road work is being done. He suggested the possibility of opening up the park gate so that Walker Road residents could go out that way. He said that if it is dry enough, they could go through the park (which is also Walker Road) through Wells State Park which connects to Walker Pond on the other side.

M. Dowling said that Walker Road needs to be addressed now, notwithstanding when the road plan is completed. She noted that it is a public road, and there was an incident where an emergency vehicle had difficulty getting down it. She said that the Conservation Agent said that there is also a wetlands issue. She said that this situation is unacceptable for a public road.

J. Langevin said that the Town had always plowed Walker Road and graded it, but since 2003 it has been treated like a private way. T. Creamer said that the Board had received a memo from Greg Morse, DPW Director, dated May 6, 2011 which he read into the record.

T. Creamer said that the issues on Walker Road should be addressed as soon as possible. He suggested that the Board direct the Town Administrator to meet with the DPW Director to develop a plan for conducting a study of the drainage issues on Walker Road and to determine what the resolution would be so that residents could be provided with a timeline for some level of intervention, while at the same time being in compliance with the Wetlands Protection Act. Erin Jacque, Conservation Agent, said that exceptions can be made in the interest of public health or safety, where that could be at risk. She added that they would not necessarily have to go through the entire filing process or go through all of the permitting procedures that they would ordinarily need to go through. T.

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Creamer suggested that the Town Administrator and DPW Director meet with Erin Jacque, Conservation Agent, within the next seven days to have some preliminary discussions and to report back to the Board at the second meeting in June; and that the Board receive a report from the Town Administrator that encompasses the wetland issues; then at that point the Board could make a more informed decision.

J. Langevin said that the residents of Walker Road would like to have a representative present at the meeting. P. Gimás suggested that there be a temporary measure in place to carry them through another winter as the process is in progress. J. Langevin said that they are encouraged by the Board's input, that the matter will come to a resolution, and he thanked the Board for its time.

M. Dowling said that she would like to see a plan for the drainage; in the meantime, if there are any issues, she encouraged J. Langevin to come back before the Board.

Cable Advisory Committee – Appointment of Full-Time Production Coordinator

Don Fairbrother of the Cable Advisory Committee and Bruce Butcher appeared before the Board.

S. Suhoski said that further to the CAC's staffing and budget plan as approved by the Board, he offered the position to Mr. Butcher at Grade 8, Step 4, in recognition of over 25 years of video production experience. This equates to an hourly rate of \$20.75 for 35 hours per week. This equates to \$37,765 annually for the position which ranges from a minimum of \$35,581 to \$42,515. He noted that Mr. Butcher is as energized as is the CAC to develop Sturbridge's local programming options into an exciting community resource for the public, education and government purposes.

MOTION: That the Board of Selectmen ratify the Town Administrator's appointment of Bruce C. Butcher, of Auburn, as the full-time Production Coordinator for the Cable Advisory Committee effective May 17, 2011 at an hourly rate of \$20.75, by M. Blanchard.

2nd: P. Gimás

Vote: All in favor.

Erin Jacque, Conservation Agent

Erin Jacque, Conservation Agent, appeared before the Board for a discussion per the Chairman's request regarding trails-related responsibilities. T. Creamer said that the Board had some concerns in response to a number of questions. He said that on February 15, 2011 he had sent a memo in which he had

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articulated the concerns of a number of department heads with regard to certain volunteer committees and some of the work that was being done, although commendable and outstanding, there were some concerns expressed about the fact that paid staff were not being directly involved in the decision-making process. On February 17, 2011 T. Creamer had a conversation with the Town Administrator; on February 23, 2011 he provided to the Board some information that had been provided by several department heads (DPW Director, Finance Director, Town Planner and Conservation Agent) relative to concerns, manifested on March 6, 2011. He said that there had been another correspondence to the Town Administrator outlining some concerns with respect to some of the things that were occurring with some volunteer committees, most of it due to a great deal of motivation that these individuals have. On March 7, 2011 the Board had agreed to realign the Trails Committee to be under the direct supervision of the Conservation Agent; and on March 14, 2011 the Board met with the Conservation Agent to review some of the concerns and to discuss the transition. On March 21, 2011 the Board ratified the new Trails Charter, which had been provided by the Conservation Agent.

E. Jacques said that she compiled every possible piece of information in order to give the Board a big picture view of everything that has been going on, including trails related documents, trails related accounts, a compilation of the account balances, what monies have been spent on, warrant articles for approval of the funds, grant documents that were assembled from grants that have been approved for the Trails Committee, and she had met with Tom Chamberland on a number of requests to get the history of all of these projects. She also met with the Chairman of the Trails Committee and gotten an update on their pending projects. She met with the Finance Director, Town Administrator, Tom Chamberland and Randy Redetzke at one meeting, then subsequently met with Barbara Barry, Finance Director to make sure that she had understood.

E. Jacques said that there is a constant need for communication. She noted that the hardest part has been adjusting to the workload shift, and adding to her workload. M. Blanchard said that there needs to be communication and direction.

T. Creamer said that he had asked for information on the trail waivers, establishing equipment waivers, in light of the fact that there was a request for \$200 to repair a piece of equipment that had been damaged on Town property. He said that there was a request for a gas account. He expressed concern that over the course of the last three years, according to the spreadsheet dated 4/17/11, approximately \$186,000 has been authorized for expenditures by the Trails Committee; of that, \$40,796 of it was in-kind services from the DPW for work that was done and paid for by taxpayers, which comes to almost \$75,000 over the last two years annually to the Trails Committee. He said that these funds come from CPC, Betterment, and a number of different resources, and the Town may not be prioritizing taxpayer funds in a manner that is most consistent

with the needs of the community. He noted that millions of dollars have been spent on open space acquisitions, and they should be taken care of; however, considering the contamination issues on the river lands, it should have been determined by paid staff as to what was in the best interest of the community.

He noted that there is 85,000 in volunteer hours that account for volunteer work that was done on the trails. He asked E. Jacque to address why the volunteer hours are being tracked. E. Jacque said that it goes back to the Trails grant, and a large amount of money was set aside for Sturbridge to put toward construction of a small section of the Grand Trunk Trail, which runs from the Ed Calcutt Bridge to River Road and Farquhar Road. She noted that the earmark was \$576,260 and is being held by Mass. Highway in order to administer the construction of a $\frac{3}{4}$ mile section of trail that will be built to Mass. Highway standards, which is extremely expensive to construct. She said that the purpose of this section of trail is as an alternate mode of transportation. She said that the grant provided 80% of the design costs, while the Town provided a 20% match to \$41,440, which would have amounted to \$10,360. She said that when the original amount was determined, they didn't include environmental permitting costs associated with the design; it only included survey work and engineering work. She noted that \$8,200 was set aside by the Town for environmental permitting.

E. Jacque said that she was going to meet with Tom Chamberland, the engineer from CME Associates and a representative from the Army Corps of Engineers to go over the design. She noted that there are easement issues which will result in additional costs, and if the trail ends up getting shifted because the land owners won't allow an easement through their property, it will mean shifting the trail over the Army Corps of Engineer property, which would introduce another budget concern, which may trigger a MEPA review, an environmental review process which would require additional permitting. T. Creamer asked whether she addressed those potential issues prior to going for a grant.

E. Jacque said that depending on who she talks to, there will be a different process to follow. She said that she would prefer to have an easement in hand before applying for a grant. She said that she had applied for a \$5,000 grant (with the partnership of the Grand Trunk Trailblazers) from the American Hiking Society to construct a handicapped accessible trail dependent upon getting an easement from Old Sturbridge Village. They got the grant money, the gravel is there, the trail is there, it has been constructed, but their hands are tied now for constructing the parking area and the connection of the parking area to the handicapped trail because they are having trouble acquiring the easement from OSV.

M. Dowling said that the trail spending summary is the only one that the Board has, and if E. Jacque has another one that is clearer, she requested that E. Jacque email it to her.

E. Jacques said that the \$576,260 is not in a Town account; it will be administered strictly through Mass. Highway during the construction project. She said that once a contract has been awarded to a contractor to construct the trail, Mass. Highway would then begin to administer the construction phase of the project.

E. Jacques said that regarding the volunteer issue, the \$87,953 has been used as follows: if someone shows up for a trail day and has a piece of equipment or a quantity of material that they want to donate, there is their equipment time, packing up the material, transporting it to the site, and delivering it, and there is labor and the material itself, which must be quantified in some manner. She said that Tom Chamberland, working with the Army Corps of Engineers and a volunteer in Town, in partnership with the Trails Committee, has been keeping track of all of those hours of labor, equipment and donated materials and they use the federal Army Corps translation of that material, time and equipment into a real number.

T. Creamer said that on November 22, 2010 he had sent correspondence to the Town Administrator expressing concern that individuals and/or groups were using Town stationery, Town letterhead, to convey letters of volunteer time and funding. He read the correspondence into the record. He asked who had authorized that practice. E. Jacques said that it had started with the former Town Administrator, Jim Malloy, beginning with the Heins Farm project, because it was such a significant donation and so many people donated their time, equipment and materials toward that project. She had raised concerns to J. Malloy and Barbara Barry, Finance Director, at that time. She said that the impetus was so that all of the people who were donating these volumes of materials could get a letter to use as proof of a charitable donation to the Town for a tax deduction. She said that B. Barry had expressed concern about it, but J. Malloy was OK with it, and indicated that the person signing the letters would be taking responsibility for the fact that that was an accurate representation of what had happened. T. Creamer and M. Dowling said that they had an issue with that. T. Creamer said that he was not sure that that practice was legal. S. Suhoski had said that if an individual is acting on behalf of the Town, and is a volunteer and is presenting himself as acting on behalf of the Town, then the Town is responsible or liable, because that individual is acting as an agent of the community. T. Creamer said that there is not a single individual on a board or committee in the Town of Sturbridge who is not a volunteer. He said that he would like to find out if that practice is legal. He suggested that the practice stop until a legal opinion is obtained, and a policy set on how this should be done.

E. Jacques said that when the work on the Heins Farm started, a substantial amount of volunteer donations started coming in, and she had been asked by the Trails Committee to issue thank-you letters, which was one of the reasons why she had put a proposal before the Town to have Leslie Wong work in the Conservation office. She noted that the previous Conservation Agent had done mostly Wetlands Protection Act work. She said that the trail work has added a

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huge amount of responsibility to her job duties, so she needed assistance in handling all of this additional administrative work. She said that there were so many letters to be sent out and so many volunteer days that it became overwhelming for Leslie, and it reached a point where they were unable to keep up with it. She said that the Trails Committee had reached a certain level of frustration that they were not keeping up with it, and offered to take it over. She noted that this transition had taken place while J. Malloy was the Town Administrator.

T. Creamer said that the only committees in the Town of Sturbridge that have the statutory authority to sign documents on their own behalf would be the Planning Board, Zoning Board of Appeals, Sturbridge Tourist Association, Betterment Committee and the Conservation Commission. He pointed out that only a small number of people have statutory authority to sign letters on behalf of the Town, and the rest should cease and desist that practice. S. Suhoski agreed, and added that he had issued a cease and desist last fall.

M. Dowling said that she would like to see a few examples of what was stated in the letters, and asked whether Leslie Wong had made copies for their file. E. Jacque said that they have copies of the letters that had been issued from the Conservation office, but not the ones issued by the Trails Committee.

S. Suhoski said that he would look into it, and reaffirm a cease and desist. T. Creamer said that if the practice is legal, then the Board of Selectmen must establish a policy on how it is to be done, otherwise every single volunteer in the Town of Sturbridge could start to submit their hours over the course of the year.

M. Dowling said that she had equity concerns with respect to what other committees are doing, and that they many not be keeping time as such. She said that if figures are being utilized to justify additional monies coming from either the CPC or the Betterment Committee, then other groups who are going before the CPC or the Betterment Committee should adopt a similar fashion. She said that the Bloom Committee, when they plant flowers around the community, should keep track of their time, especially if this is going to be used by the CPC and the Betterment Committee to justify whether funding is appropriate through them. She said that it should be uniform throughout.

T. Creamer noted that at the time this was submitted to the Board on April 23, 2011 the Town had spent \$34,605. He expressed frustration in that there were requests for additional funds, when there was approximately \$111,000 that had not been spent yet.

M. Dowling said that she would like to see a priority list from E. Jacque as to what she deems to be the most important projects for this year, and whether they have been funded or not. She said that after that, the Trails Committee could do them in the order that the Conservation Agent presents them. She said that

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rather than more construction of more trails, she would like to see more signage on the trails, so that people using them would not get lost.

T. Creamer noted that there is a trails map on the Town's website, which takes a few minutes to download. He said that on May 2, 2011 he had sent correspondence to the Board along with a series of photos of trails behind the Leadmine Mountain area that are not marked, and he mentioned to the Board that he was aware of some people who had gotten lost out there. When he had asked E. Jacque to provide some feedback, she told him that the map that is online is not the true representation of the trails in Sturbridge, it is a general overview of the trails.

E. Jacque said that there are miles of trails that are unmapped, such as logging roads, old cart paths and walking paths that are old historical paths. She expressed concern that people use the trails regardless of whether or not they are marked. She said that they need something to bring with them to give them some idea of where they are going. She said that she would like to see the trails marked, and had indicated that to the Trails Committee. She said that the trails are general use trails, and the Trails Committee is trying to make specific use trails such as handicapped accessible trails, some horse trails, some designed for mountain bikes. She noted that they are not looking to develop a general trail, so they don't want to mark these trails for general use.

T. Creamer said that the Leadmine Mountain and Heins properties are open to the public, but they are not marked. He said that there is a lack of policy.

M. Dowling asked if unofficial trails could be marked to indicate that they are under construction. She said that it should be possible to distinguish the trails that are officially open and marked, from the unofficial trails (such cart paths), which should be marked in a different way until they are open. E. Jacque said that she had made that suggestion to the Trails Committee and asked that they discuss it at their last meeting. She had suggested posting signs that say: "Warning, you are now entering an unmarked trail. We encourage you to return to the official Town trail." Or: "Enter at your own risk." She said that the response from the Trails Committee was that they want to get some signs out on Leadmine Mountain to better mark the main sections of trails that have been constructed first, and see if it will fix the problem. She said that there are so many signs being proposed that it will blow the budget and they only have two quotes out of five solicited thus far for the signage that they have already proposed, and no purchases have been approved yet for trail signage. She noted that it is her #1 concern.

T. Creamer said that E. Jacque is the supervisor of the trails, and the Board tasks her with the responsibility to determine what is the best overall policy for marking those trails right now, and then to make it the Trails Committee's priority. He said that he had received a letter from "We the People" which he read into the

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record. M. Blanchard said that the letter is not worth much, as it was anonymous.

M. Dowling said that she would like to see some money spent on marketing. She suggested trying to market the trails that have already been constructed and marked. T. Creamer said that the vast majority of people who use the trails are local residents. He asked whether E. Jacque had been working on a policy for a gas account. E. Jacque said that she was working on it. M. Blanchard said that she did not think that a volunteer group should have access to a gas card. S. Suhoski agreed that they should not.

T. Creamer said that the Conservation Agent is to establish policies and priorities, and it is the Trails Committee's responsibility to fulfill them. He said that if there is an issue, E. Jacque should reach out to S. Suhoski or the Board of Selectmen. The Board agreed.

E. Jacque said that regarding the gas key issue, she had met with S. Suhoski and they had discussed it. She stressed the need to establish a policy. She said that when meeting with Barbara Barry and Greg Morse, they said that they did not think it was a good idea. She noted that it had taken some time to get input from everyone. It was the consensus of the Board that a gas card was not a good idea.

T. Creamer said that there was a request for \$200 for equipment that was damaged out at the property, and his initial thought was that there is no policy right now. He suggested getting an appraisal, then pay for the repair of the equipment.

T. Creamer said that regarding volunteer waivers, under the Town of Sturbridge waiver form (which he read into the record), the waiver states that if your equipment gets damaged, that is your issue, not the Town's. However, he was not sure that these waivers are being filled out as regularly as they should be.

A. Ellison said that she had an issue with establishing precedents. She used the example that the police were outside putting up a speed sign, and she had loaned them her drill, and the tip broke while they were using it. She asked whether the Town owed her a new drill.

M. Blanchard said that she had assumed that these waivers were will documented and signed. E. Jacque said that the Trails Committee does require all volunteers to fill out the waivers that they have, and they are kept on file at the Center Office Building. M. Blanchard said that this could also be a case of someone not wanting to sign a waiver. M. Dowling asked whether the individual for the \$200 request had signed a waiver. Tom Chamberland, Tree Warden, said that he wasn't at that particular trail event, so he was not sure. He said that if a waiver had been signed, it would be in the record.

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M. Dowling said that there needs to be a policy as to circumstances, as to when reimbursements are to be made and when not. S. Suhoski said that the Town should get an actual estimate statement from the person, so that the damages could be documented. He said that E. Jacques will email a copy of the waiver form directly to Town Counsel. He said that if the claim is valid, the person needs to come into the office and will need to sign a release, and Town Counsel will review the waiver. The Board was in concurrence with S. Suhoski's recommendation.

T. Creamer said that henceforth, the Town will not accept any liability whatsoever, even for the use of equipment. It was the consensus of the Board to agree with that.

T. Creamer said that S. Suhoski or E. Jacques should draft a policy to run by Town Counsel and the Board of Selectmen could vote on that. He said that when any volunteer committee is representing the Town, this is where issues are manifest. He noted that it is the responsibility of the supervisor, and the Town Administrator and Board of Selectmen to ensure that things are vetted to paid staff.

T. Creamer asked what the Trails Master Plan is supposed to do. He said that the Board has conflicting information. He said that he was under the impression that the Trails Master Plan was going to be more like the Master Plan for the Town, where they come in, do an inventory of property, and then decide the use for the trails. E. Jacques said that it was all encompassing, inventorying what the Town presently has and looking at making a vision of what the Town is looking for, similar to the Town Master Plan process, where a survey would be conducted, then outreach, and then meetings to see what the needs of the community are for those specific use trails. She added that the company would then devise a plan to address the needs and wants of the community and try to come up with trail systems to address those needs, making connections or connecting trail systems between properties so that people could utilize them more for recreational use.

M. Dowling asked why the Town was moving forward using more money for trail construction, and suggested waiting to see what the Trails Master Plan would say. She said that she could understand spending money on maintenance, signage and marketing, but not trail construction at this time.

Tom Chamberland, Chairman of the Trails Committee, said that \$10,000 would be used for both the Leadmine Mountain property and the Heins farm. He said that the Trails Committee, with the approval of the Conservation Commission and working with the Conservation Agent, had set out to start new trails on each of the properties, using their expertise to design sustainable, multiple purpose trails. He said that having a backbone of trails as they go forward with a master plan

study will help to determine how to develop additional trails. He noted that over 25 miles of existing trails are on GPS. He said that they are working on the main backbone trails to get them to a particular design standard, which was approved by the Conservation Commission, of a six-foot wide hard gravel surface and a four-foot wide (adjacent to it) natural surface trail material, for a total width of approximately ten feet. He said that it was chosen because on a hard packed surface, it would allow for maximum ease and access of use for residents who are walking on the trail.

S. Suhoski said that the preferred consultant, Kay-Lyn, had been rated the highest after a process that involved screening by the Recreational Trails Master Plan Committee and the Conservation Agent; then the top three finalists were interviewed. T. Creamer said that he had done a lot of bid proposal and RFP work for the federal government, and it would never have been allowed for an individual who helped to write the qualifications for a Request for Proposal to then become part of the team that solicits. He said that fortunately they did not get the bid, or there would potentially be something unethical or illegal about it. T. Chamberland said that it was a concern that he shared. He said that the committee had consulted heavily with the Town Planner in developing the RFP, and requested outside guidance to develop recreational trails. He said that he had met with Jean Bubon, Town Planner, many times to make sure that they were doing the right thing. He said that when she brought up that concern, he talked to that individual and from that point on, he backed off and stopped attending the meetings. When it came time for the final votes for the Recreational Trails Master Plan, he did not participate in that process. He said that in the early stages in finding out exactly what GIS capabilities are and what they would mean to the Plan, there was a benefit to his participation; once the RFP was released, he did not show up at the meetings at all.

T. Creamer said that the issue is that no matter how well intentioned volunteers are, if there is not a policy in place, people are going to end up putting the Town in situations that it shouldn't be in.

T. Creamer said that Erin Jacque, as a paid staff member, is responsible for the Trails Committee, and final decision making and establishing priorities. He noted that the Board of Selectmen will see that she has the support she needs to do that. M. Blanchard added that if the Trails Committee disagrees with E. Jacque's priorities, ultimately the decision is hers. She noted that they are an advisory committee and they need to listen to her.

Various Re-appointments

Following please find recommended reappointments for the Board's concurrence. There will be additional names put forward at your next regular meeting.

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A. Town Employees

<u>Name</u>	<u>Position</u>	<u>Term Exp.</u>
Barbara A. Barry	Finance Director	2014
Robert Garon	Asst. Wiring Inspector	2014
Gregory Morse	DPW Director	2014
Robert Anderson	Highway Department	2014
John Booth	Highway Department	2014
John Christianson	Highway Department	2014
Brian Curboy	Highway Department	2014
Daniel Gervasi	Highway Department	2014
Daniel Kievman	Highway Department	2014
David Mitchell	Highway Department	2014
Timothy Pupka	Highway Department	2014
Wayne Smith	Highway Department	2014
Sgt. Jeffrey Lavallee	Police Department	2014
Hillary Dadalt	Police Department	2014
Pamela Desplaines	Police Department	2014
Daniel Hemingway	Police Department	2014
Daniel Menzone	Police Department	2014
Jean Bubon	Town Planner	2014
Barbara Search	COA Director	2014

MOTION: That the Board of Selectmen ratify the list of appointments of Town employees by the Town Administrator, by M. Blanchard.

2nd: P. Gimas

Vote: All in favor.

B. Town Boards and Committees

<u>Name</u>	<u>Position</u>	<u>Term Exp.</u>
Michael Young	Zoning Board (TA appointee)	2014
Brian Burns	Historical Commission	2014
Thomas Ford	Safety Committee	2014
Donna Grehl	Conservation Commission	2014
Jeffrey Bonja	Personnel Committee	2014
Joan Chamberland	Personnel Committee	2014
Kelly Emrich	Community Preservation Com.	2014
Alfred Champagne	Tree Warden Advisory Com.	2014
Joseph Kowalski	Tree Warden Advisory Com.	2014
Brian Amedy	Sturbridge Tourist Association	2014

MOTION: That the Board approve the list of appointments of board and committee members, by M. Blanchard.

2nd: P. Gimas

Vote: All in favor.

Appointment of Plumbing Inspector and Assistant Plumbing Inspector

In April S. Suhoski had sent a memo to the Board outlining the qualification of the two candidates for these part-time inspector positions.

George S. Wolstencroft: S. Suhoski said that George Wolstencroft is the current temporary plumbing inspector, appointed after the prior inspector's resignation. Mr. Wolstencroft has extensive experience, is knowledgeable and has performed well during his temporary assignment. He has committed to learning to utilize emails for better communication and record-keeping with office staff. George has both public and private sector experience. He continues to work as a licensed plumber and is also the plumbing and gas inspector in the town of Holland, and the alternate in the town of Southbridge. He would be appointed to the Plumbing Inspector post with a six-month probationary period as per the Personnel Policy. The flat rate is \$35 per inspection.

Robert F. Wall: S. Suhoski said that Robert Wall has been the plumbing inspector in the town of Spencer for approximately 17 years and is also the plumbing inspector for the town of Brookfield since 2002. Prior to that, he owned his own plumbing and heating company in Spencer. Mr. Wall has a wealth of experience and would provide very competent backup to Mr. Wolstencroft. He would likewise be appointed with a six-month probationary period at a flat rate of \$35 per inspection.

MOTION: That the Board of Selectmen ratify the Town Administrator's appointment of George S. Wolstencroft as Plumbing Inspector, and Robert F. Wall as Assistant Plumbing Inspector, effective May 14, 2011, each subject to a six-month probationary period as specified in the Town's Personnel Policies, with compensation to be \$35 per completed inspection, by M. Blanchard.

2nd: P. Gimás

Vote: All in favor.

Miscellaneous

S. Suhoski informed the Board that he had received a complaint to the Harbormaster regarding a seasonal dock at South Shore Drive. He went to the site, and is awaiting information from a staff member as to the square footage and distance calculations that would be pertinent. He said that he would like to schedule this issue at the May 23rd meeting, or in June. The consensus of the Board was to address the issue at the June 13, 2011 meeting.

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S. Suhoski informed the Board that he had met with the Town Planner and unified permitting consultant (Navigar) to revise contract documents for execution. He said that he had received a Certificate of Insurance from them.

Correspondence

M. Blanchard read the correspondence list into the record.

MOTION: To accept Michael Harrington's resignation from the Sturbridge Tourist Association, with regret, by M. Blanchard.

2nd: P. Gimas

Vote: All in favor.

M. Dowling asked S. Suhoski to find out why Michael Harrington resigned, and noted that there have been a lot of resignations from the Sturbridge Tourist Association.

M. Blanchard read the letter regarding the Open Meeting Law into the record.

T. Creamer said that he had received a letter dated May 4, 2011 from Mass. DEP; S. Suhoski said that he had received it also, and had spoken to the Conservation Agent about it. T. Creamer said that he had received a call asking why the Board did not mention that it had received this letter. S. Suhoski said that the letter regarding alleged issues between neighbors had come in last week, and Town staff had responded time and again, and ultimately he had sent a letter, along with input from the other pertinent department head, indicating what they had found. He noted that site visits had been done, and there was nothing else that could be done. T. Creamer said that there was a report that was sent to their attorney Catanzano from Cornerstone Engineering, and he offered to make a copy for the Board.

Approval of Minutes

T. Creamer requested that the work session minutes be expedited.

MOTION: That the Board approve the minutes of April 19, 2011 as amended, by M. Blanchard.

2nd: P. Gimas

Vote: All in favor.

Old Business

P. Gimas said that she had received three phone calls regarding temporary signs from people who did not want to be identified for personal reasons. She said that there are concerns about a lack of consistency in enforcement of the sign bylaws, as some businesses are being monitored, while others are not. T.

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Creamer said that on a number of occasions, the Board had indicated to the Zoning Enforcement Officer that enforcement must be equitable and should not be based solely on complaints. He said that the Director of the Chamber of Commerce had coined a phrase (referring to signs on Routes 20 and 131) as "sign pollution." He said that he would send an email to the Building Inspector.

M. Blanchard noted that the Road Program was due by May 2nd.

M. Blanchard said that the deadline for the department head evaluation packets was May 16, 2011. S. Suhoski said that four more evaluations were added on May 16th. He said that one employee had been absent for a period of time, and another department head will be scheduled next week. M. Blanchard said that it had been six months since the department heads had received their incentive pay, and six months where their goals have not been agreed upon, so they would not have much time to accomplish their goals before the next review. T. Creamer said that M. Blanchard raised a good point, but added that the last several months have been hectic, with review of the budget and Annual Town Meeting warrant. He said that the evaluations would probably not be agreed upon until the end of June or middle of July. He expressed concern that in December, when the department heads will be looking for their incentives, that the information would not be available for the Town Administrator to be able to give the merit increases; he questioned what kind of message that would send to department heads, if evaluations are not done in a timely manner. He asked that it be expedited.

MOTION: To adjourn, by M. Blanchard.
2nd: P. Gimas
Vote: All in favor

Respectfully submitted,

Judy Knowles

BOS Clerk

Date