

MEETING SELECTMEN/SEWER COMMISSION MEETING DECEMBER 1, 2010

Members present: Kevin McCormick Christopher A. Rucho
 Allen Phillips John O'Brien
 Steven Quist

Mr. McCormick convened the meeting at 7:00 p.m.

Read and Acceptance of Minutes from Previous Meeting

Motion Mr. O'Brien to approve the regular session meeting minutes for November 15, 2010, seconded by Mr. Rucho. Vote on the motion – Messrs. Phillips, Rucho, McCormick and O'Brien yes; Mr. Quist abstains as he was not in attendance at the meeting.

Motion Mr. O'Brien to approve the regular session meeting minutes for November 17, 2010, with an edit under the section dealing with the review of the Town Administrator by changing the word 'pat' to 'part', seconded by Mr. Quist, all in favor. Vote on the motion – Messrs. Quist, Rucho, McCormick and O'Brien yes; Mr. Phillips abstains as he was not in attendance at the meeting.

Motion Mr. O'Brien to approve the first set of executive session meeting minutes for November 17, 2010, seconded by Mr. Quist, all in favor. Vote on the motion – Messrs. Quist, Rucho, McCormick and O'Brien yes; Mr. Phillips abstains as he was not in attendance at the meeting.

Motion Mr. O'Brien to approve the second set of executive session meeting minutes for November 17, 2010, seconded by Mr. Quist, all in favor. Vote on the motion – Messrs. Quist, Rucho, McCormick and O'Brien yes; Mr. Phillips abstains as he was not in attendance at the meeting.

Motion Mr. Phillips to approve the regular session meeting minutes of November 22, 2010, seconded by Mr. Rucho, all in favor.

Motion Mr. Phillips to approve the executive session meeting minutes of November 22, 2010, seconded by Mr. Rucho, all in favor.

Colin Novick, Greater Worcester Land Trust, Lee Street Conservation Restriction

Colin Novick Executive Director of the Greater Worcester Land Trust joined the Board. He explained that the organization works with communities to identify community property identified in their Open Space Plan and Recreation Plans. The West Boylston Open Space Committee identified the 5.4 acre parcel of land on Lee Street, which is located in Zone 2 Aquifer Protection. The West Boylston Water District made a commitment to allow them to proceed and negotiate a purchase price with the Kents, the owners of the property. They worked with the state to get a \$70,000 grant to allow them to do this. This evening Mr. Novick is seeking two motions from the Board of Selectmen. The first is to purchase the land from the Greater Worcester Land Trust for \$70,000 and the second is to place a Conservation Restriction on the property which is required by virtue of the state grant. He added that Mr. Coveney of the Water District could articulate the importance of this land to the Town of West Boylston. Mr. McCormick noted that the \$70,000 was raised through the Community Preservation Act and approved at our recent town meeting.

Mr. Novick explained that the Conservation Restriction ensures that the property will not be developed in the future. In this case it makes sense to do this because the well land has open land around it. This guarantees that the land will not be developed and it provides guidelines on how the land will be used in the future such as passive recreation and ground water recharge. The state likes to make sure that land they have invested money in stays in a Conservation Restriction.

With regard to the request to have the Board vote to acquire the property, Mr. Gaumond noted that he has not seen a Purchase and Sales Agreement for the Board to review. This is also the first time the Selectmen are seeing the Conservation Restriction and we have made some assumptions. We made

it clear that the town does not intend to have an access road built on the property or use the property for parking purposes. Mr. Gaumond has received notification from Mr. Coveney and the Water District that they are satisfied with the Conservation Restriction as prepared. He does not know if the Board of Selectmen can vote on the actual acquisition at this time. Mr. Novick indicated that they have a Purchase and Sales Agreement with the Kents to purchase the property. They can hand over the deed at the Registry of Deeds and it has to be done before the end of December. Mr. Gaumond explained that Town Counsel has forwarded to the Board of Selectmen a draft motion to approve the Conservation Restriction as approved by the West Boylston Water District and the Greater Worcester Land Trust. Counsel suggested that the vote on the actual purchase would be done at the December 15th meeting of the Board of Selectmen. Mr. Novick is fine with that time line. Mr. O'Brien asked whether a full title search will be performed. Mr. Gaumond advised that Town Counsel is working on that at this time.

Mr. Phillips questioned how the Board can vote on approving a Conservation Restriction for land they do not yet own. He would feel more comfortable holding off until after the motion to purchase. Mr. Novick indicated that it could wait. Mr. Phillips has no problem and would feel more comfortable voting when we vote the other as he would rather not do a 'conditional' vote. Mr. Novick noted that problem with the Conservation Restriction is the collection of signatures from the Board of Selectmen, Conservation Commission, West Boylston Water District and Secretary of the Environment in Boston. That is why they try to start the signature process on the early side.

Mr. McCormick feels if the Board approves the Conservation Restriction this evening and never purchases the land on the 15th, the restriction does not apply. He recommends giving a conditional approval. Mr. Novick added that the Secretary of the Environment will not sign until everyone else has signed. Mr. Gaumond noted that Town Counsel was comfortable with the motion being made on the Conservation Restriction tonight in anticipation of the December 15th vote to purchase.

Motion Mr. Phillips to approve and execute the Conservation Restriction to be granted by the Town to the Greater Worcester Land Trust and the West Boylston Water District on property located at Lee Street substantially in the form presented to us by Town Counsel as of this date, as the same may amended by Town Counsel in order to obtain the approval of the Secretary of the Executive Office of Energy and Environmental Affairs, seconded by Mr. Rucho, all in favor.

Mr. Gaumond thanked the Open Space Committee, the West Boylston Water District, Mr. Novick, the Greater Worcester Land Trust and the Community Preservation Committee.

John K. Westerling, Director Of Public Works

1. DPW Employee Recognition

Mr. Westerling reported that DPW employees Michael Kittredge and Paul Osterberg recently competed in the state-wide Snowplow Rodeo competition which was conducted by the Mass Highway Association in Fitchburg. They earned the privilege of competing in the event by placing second in the qualifying event that was conducted by the Worcester County Highway Association in Shrewsbury. The Worcester County Highway Association provided them with jackets for their accomplishments.

Mr. McCormick presented jackets to Michael Kittredge and Paul Osterberg.

2. Emuge Abatement Request

Mr. Westerling explained that when Emuge connected to sewer they installed a water meter which was for outside water usage. They recently brought it to our attention that they have been

receiving their sewer bills with the two meters combined. They are asking for a partial abatement of \$12,780.61 on the \$22,000. The remainder will stay as a credit on their account.

Motion Mr. Phillips to approve the abatement in the amount of \$12,780.61, seconded by Mr. Rucho. Mr. Rucho questioned whether the Board should be abating the entire amount and leaving the remainder as a credit. Motion and second withdrawn.

Motion Mr. Phillips to approve an abatement of the Emuge sewer bill in the amount of \$22,780.61 and to leave \$10,000 as a credit, seconded by Mr. Rucho, all in favor.

3. Flooding, Franklin Street Paré Property

Mr. Westerling informed the Board that there is a low point behind the property parallel to Franklin Street behind the Paré property and the dental office. The Parés are still receiving water because it is a low point and Mr. Westerling wants to take a second look at that area as we may need to modify the catch basin. They have flooding in their back yard during heavy rains. He is requesting using \$1,890 of Chapter 90 funds to have LEI review the situation.

Motion Mr. Rucho to authorize the use of \$1,890 of Chapter 90 funds to have LEI review the situation, seconded by Mr. O'Brien.

Mr. Phillips questioned if we find there was an issue with the design or the construction, what is our option. Mr. Westerling does not believe it is a problem with the design. He thinks we could probably fill in some of the property to raise the elevation or notch out a bit of the catch basin in the back. He added that it could be something that the DPW could handle. Mr. McCormick noted that they already had water in their back yard. Mr. Westerling stated that it used to be worse as we have eliminated the water coming off the street onto the property. He wants to make sure that none of the construction the Town of West Boylston has done contributed to the water issue. He added that the condition did exist before and we made it better because we took the water off of the street. Mr. Phillips questions why the town would want to evaluate the situation if we didn't do anything. Mr. Westerling explained that the town put a catch basin in front of it to accept the receiving water. We put in a change, and this will say it was designed appropriately or say we will slightly change it. No changes will be made unless it goes before the Board for approval. Vote on the motion – all in favor.

4. Trash disposal recommendation

Mr. Westerling reports that he went out to bid for disposal of the towns' municipal solid waste. He received two proposals and he is recommending the town enter into negotiations with Casella Waste for a five year agreement with an option of a five year extension upon written approval of the town. We are currently paying \$79.73 per ton to Wheelabrator in Millbury and that agreement is due to expire on December 31st. Casella's proposal is at \$63.00 per ton, which will result in a savings of more than \$33,000 based on our annual average of 2,000 tons.

Mr. Phillips asked if this would impact Allied Waste. Mr. Westerling explained that this is used as a transfer station for all our waste and it is not an additional hauling distance. Allied Waste has indicated that it will not impact our contract with them.

Motion Mr. Phillips to enter into negotiations with Casella Waste for a five year agreement with an option of a five year extension upon written approval of the town, seconded by Mr. Rucho, all in favor.

5. Mr. Rucho stated that in regards to the other side of Franklin Street the drainage seems to be working great, but coming up towards Route 12 on the right it is puddling off of it. Mr. Westerling noted that our portion of the catch basin work cost \$4,700. The site supervisor had a filter fabric requirement by the Conservation Commission and it was not allowing the water to come through. They

have removed that fabric and they installed in the berms on Friday. The detention pond behind the post office is going onto the Franklin project property. They intend to loam and sod the entire side in front of Rayanne. Mr. Westerling reported that the Route 12 drainage runs unabated and the Mass DOT will be reviewing the situation to see whether they need to install new drainage to get the water from flowing down Franklin Street. Mr. Phillips noted that the contractors are leaving two or three boards in the road at the end of the day. Mr. Westerling advised that they will be doing the final grading of the detention basins and the boards will be removed and the fencing will go up. Mr. Phillips thinks they should remove the boards at the end of the day. Mr. Westerling added that they will be retrofitting the ramps and the sidewalks. Mr. Gaumond advised that there will be a sidewalk on Franklin Street from the corner up to the Franklin Street project property.

NEW BUSINESS

1. Concurrence on the appointment of Sam Wong, 136 Sterling Street, #A8 to the Board of Health, effective December 2, 2010 for a term to expire on April 30, 2012

Motion Mr. Rucho to concur with the appointment, seconded by Mr. Phillips, all in favor.

2. Concurrence on the appointment of Diana Englebart, 68 Bowen Street to the Open Space Implementation Committee, effective December 2, 2010 for a term to expire on June 30, 2011

Motion Mr. Phillips to concur with the appointment, seconded by Mr. Rucho, all in favor.

3. Renewal of Business Licenses for 2011

Mr. McCormick recused himself. Annually in December the Town of West Boylston renews its business license. We have two food establishments who will have their licenses held, Aglios and Wachusett Country Club, both have simple items that need to be worked on and will be on the December 15th agenda. The Reservoir Motor Lodge never applied for their renewal as required in the Motel Regulations and they also have some outstanding taxes and sewer usage. This license will also need to be withheld. There are also some businesses with outstanding false alarms and personal property which will not be released until payment is made. With regard to Reservoir Motor Lodge, we entered into a payment plan, however, they failed to live up to the agreement. It was also noted that some businesses are located on properties whose owners owe sewer usage, not the business.

Motion Mr. Quist to approve the issuance of licenses to those businesses on the listing with the exception of Aglios, Wachusett Country Club and Reservoir Motor Lodge, seconded by Mr. O'Brien, all in favor.

4. Renewal of Alcoholic Beverage Licenses 2011

Motion Mr. O'Brien to approve the issuance of alcoholic beverage licenses to those businesses on the listing with the exception of Aglios, Wachusett Country Club, seconded by Mr. Quist.

Mr. Phillips asked if we still have restrictions on the license for Pinecroft and questioned whether a public hearing would be necessary to eliminate some of the restrictions due to the fact that they have had the license for quite some time now without any incidents. Mr. Phillips remembers the owner mentioning this when he appeared before the Board to get his entertainment license for his lot next door. Mr. Gaumond recommends that if there is a request by the applicant to have the restriction lifted, then a public hearing would be required.

Vote on the motion – all in favor.

Mr. Gaumond noted that there are some businesses that have issues with taxes, false alarms and the Planning Board. He intends to outreach to them. The issue with Wachusett Country Club is the new requirements from the NFPA with regards to kitchen exhaust fan cleaning. Aglios needs to provide a report that their fire alarm system and suppression system have been monitored. They both are

scheduled for reinspection on Monday. Both the Building Inspector and the Fire Chief expect there will be no problem and they will be ready when the Board meets on December 15th. Mr. Rucho questioned whether the Board could approve the licenses with those conditions being met. Mr. Gaumond explained that a conditional vote could be done for business licenses, however, it cannot on a liquor license as the Board is required to have a Certificate of Inspection signed off on by the Fire Chief and Building Inspector prior to approval.

Mr. Phillips questioned whether there are any other issues with the Reservoir Motor Lodge other than the outstanding taxes. Mr. Gaumond will have those answers as he will be meeting with the business owner on Monday to discuss their future plans because the town may be left with some difficult choices on what to do with their parcel of land. Mr. Rucho noted that we gave them a chance the last time and they are not complying with the payment plan he questions whether we are we going to go back to them and say do you want to do another plan on top of that. Mr. Gaumond noted that right now they have not even applied and the deadline was November 30th. He does not think we are going to get a request for renewal any time soon or a check for the taxes. They were notified by letter in August, October and a couple of weeks ago they were emailed and they were served by a Constable just yesterday. Mr. Rucho questioned what we have done in regards to the payment plan. Mr. Gaumond explained that the business owner and the property owner are not the same person. Our business is with the person who owns the property. The Treasurer/Tax Collector and he have been in conversation and they are preparing to take the next steps. Mr. Phillips would like to have the information if they are in compliance with the other departments.

5. Request for Common Victualler License from Dairy Queen

Nick Moodious of 8 Fox Hall Road, Worcester, part owner and President of the Corporation, owns 50% of the business. He stated that it has been a long road and he hopes to be open in two to three weeks. During the winter he will be open from 10:00 a.m. to 10:00 p.m. and in the summer he will remain open until 11:00. He looks forward to being in town and has a grill and chill menu which includes ice cream, orange Julius, smoothies, grilled food, four iron grilled sandwiches, and hot dogs. It is casual dining.

Mr. Quist asked Mr. Moodious how he found working with the town. Mr. Moodious indicated that it was a very pleasant experience with all the boards. It was a difficult site because of Gates Brook and he had to deal with DCR and the Planning Board. Overall it was a very positive experience considering the limitations the site had. He added that several boards were a little easier to deal with than others. Mr. Moodious has applied for a final inspection and he is trying to get it done on Friday. Once they get their Certificate of Occupancy they need ten days for set up and training.

Motion Mr. Rucho to grant a Common Victualler License to Dairy Queen pending a Certificate of Occupancy being issued, seconded by Mr. Quist, all in favor.

6. Announcement of Performance Measurement Report for 2010

This is the 5th annual report. Mr. Gaumond is extraordinarily proud of the work that has gone into this. This past year we added Police Department checks on the business and motels. The Fire Department reports on fire inspections and numbers of ambulance and fire calls. Month sewer flows are tracked and the DPW tracks recycling, trash, and fuel usage by department. The Council on Aging added the number of units of people being serviced, computers continue to track our monthly demand and the Board of Assessors continue to track abatement,s monthly deeds and abutters lists. The Library measures circulations and the number of people who visit. The Building Inspector continues to tract the numbers of permits for building, plumbing, gas and wiring. Last year we added tracking sick time for all departments and we have been tracking utilities since 2007 for municipal buildings. Mr.

Gaumond invited the public to send in their comments on things we should try to measure as long as they are meaningful and easy to measure. All the information will be posted on the website under the Town Administrator's page. He also thanked the departments who gave him the data to compile the report.

Mr. Rucho questioned how we use the information and how it is helpful. Mr. Gaumond explained that during the budget making process, requests have to be justified to some of the data. With regard to trash, in 2005 our recycling rate was 20% and now we have numbers up to 34%. Sewer usage is another area we track including trends on connections and flows. Some of the data is less meaningful to track such as number of abutter lists are given out. In towns that do performance measurement they pick a few things and we picked a large number of items to tackle. The next step will be benchmarking with other communities and we may start looking at trending of data with other communities.

7. Review and vote to sign Liquor License Renewal Affidavits.

Motion Mr. Rucho to sign the Liquor License Renewal Affidavits for 2011 for all holder with the exception of Wachusett Country Club and Aglios, seconded by Mr. Quist, all in favor.

MEETINGS, INVITATIONS & ANNOUNCEMENTS

1. December 2, 7:00 p.m., Municipal Buildings Advisory Committee Mtg.

2. West Boylston Recreation First and Small Tracks Ski and Snowboard Program begins January 8, 2011 at Ward Hill

All the information on the program is on the town's website and Mr. Gaumond also sent out a blog.

3. The Economic Development Task Force would like to thank everyone who sent in a response to the town's Slogan Contest. They received over 80 suggestions and the top seven are on the website for people to select their favorite. The choices are, Pride of Wachusett, The Gem of the Wachusett, Beauty-Progress-Pride, Small Town, Big Heart, A Community of Excellence, Serenity Meets Progress and Gateway to Opportunity. Thus far 27 votes have been submitted.

4. Mr. McCormick announced that on December 5th at 5:00 p.m. the town will conduct its annual tree lighting ceremony. This year both the large tree and the small tree will be lit, and the event will meet one of the Board's goals on increasing community spirit. The money for the lights came from the sale of holiday banners and the It's a Celebration Committee is continuing its solicitation process.

FUTURE AGENDA ITEMS

Mr. Rucho questioned when the Board will have a discussion on the pay-as-throw program. Mr. Gaumond advised that he is working with Finance Director Michael Daley on finalizing the calendar year data. He anticipates the meeting will be a late winter discussion.

Mr. Phillips questioned whether Reservoir Motor Lodge paid any of the back taxes outlined in the payment agreement with the town. Mr. Gaumond is not sure that he can answer that 100% accurately. Mr. Phillips voiced concern that an agreement was made and the Selectmen should have been notified of his noncompliance before now.

Motion by Mr. Phillips at 8:30 p.m. into executive session pursuant to G.L. c. 30a, §21, parts 2 and 3 to discuss strategy with respect to contract negotiations with the Town Administrator and to discuss strategy with respect to collective bargaining if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the Chair so declares, seconded by Mr. O'Brien. Roll call vote: Mr. Quist yes, Mr. Phillips, Mr. McCormick yes, Mr. O'Brien yes, Mr. Rucho

yes. Mr. McCormick declared that holding such discussion in an open meeting may have a detrimental effect on the bargaining or litigating position of the Board of Selectmen and the Board may be going back into open session.

Motion Mr. Rucho at 9:10 p.m. to come out of executive session and reconvene in open session, seconded by Mr. Quist. Roll call vote: Mr. Quist yes, Mr. Phillips Mr. McCormick yes, Mr. O'Brien yes, Mr. Rucho yes.

Employment Contract with the Town Administrator

Motion Mr. Philips to approve the employment contract with the Town Administrator with the following changes: the first is in Section 3, Termination and Severance Pay. Sentence read as follows, "however, that in the event the Town Administrator is terminated for just cause for incompetence and/or gross misconduct in office, the Town shall have no obligation to pay the aggregate severance sum provided for in this paragraph." The second is to add the following sentence to the end of the second paragraph under Section 11, Indemnification, "However, the Board of Selectmen shall not withhold Counsel representation for Town Administrator's choice of Counsel where his Counsel's rate of pay is comparable to that of the current litigation rate or less paid by the Town to town counsel." The third change is with regard to Section 11– Indemnification, the insertion of the following language "To the extent permitted by law," before "the Town shall defend, save harmless and indemnify the Town", seconded by Mr. Quist.

Mr. Rucho stated that he thinks the Town Administrator does a good job. His concern is the rate of pay in the contract. The first year he will get over a 10% raise and over a three year term he will get a 16% increase. In these tough times when we are eliminating town employees and increasing the insurance percentages employee pay, he cannot comfortably vote this kind of money. Vote on the motion – Mr. Quist, Mr. Phillips, Mr. McCormick and Mr. O'Brien yes; Mr. Rucho no.

With no further business to come before the Board, motion Mr. Rucho at 9:26 p.m. to adjourn, seconded by Mr. O'Brien, all in favor.

Respectfully submitted,

Nancy E. Lucier

Approved: December 15, 2010

Kevin M. McCormick, Chairman

Allen R. Phillips, Vice Chairman

Steven J. Quist, Clerk

Christopher A. Rucho, Selectman

John J. O'Brien, Selectman