

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. Phillips to approve the regular session meeting minutes of January 5, 2011, seconded by Mr. Quist, all in favor.

Town Administrator's Commitment to Excellence Award

Annually Mr. Gaumond comes before the Board and presents the Town Administrator's Commitment to Excellence Award and tonight, the 2010 award is being presented to Christian Koppetsch of the Fire Department. His nomination cited his efforts to keep the Fire Department and especially the ambulance service together when we were short staffed and provide constant paramedic coverage for the town for several months until we were able to fill those positions. In one nomination it was said that his service was not only exemplary but that he has received countless thank yous from the citizens for the life saving work that he has performed and that he really does speak to the excellence in West Boylston. In recognition of the work that Chris provides to the Town of West Boylston and its citizens, Mr. Gaumond commented him for his work with the Town and encouraged him to keep up the good work. He is sure that his family and friends are proud of him and the work he continues to do on behalf of the Town of West Boylston. Chris Koppetsch and Fire Chief Richard Pauley came forward. Mr. McCormick congratulated Chris and noted that he served with him on the Fire Department for years. Mr. Phillips presented the award to Chris and stated that he is well thought of and he acknowledges the large group of Fire Department employees and municipal employees who are in attendance this evening to see him get this award. Chief Pauley stated that Chris represents the very best of the West Boylston Fire Department. He added that it is no secret that when the department ran short staffed several years ago Chris stepped up and covered many shifts. He also took the time to provide his expertise and leadership as we attracted new members to the department.

Franklin Street Project Owners

Charles Gagnon, Chief Operating Officer of SMOC joined the Board and introduced Michael Comiskey Director of Development, Joseph Salvia Vice President of Maloney Properties, and Maureen Stetson Property Manager. Mr. Gagnon explained that the project began as Freedom Worship Center, an affordable housing project of 26 units and when the market collapsed the Department of Housing and Community Development asked SMOC to come in and take over the project. He stated that they do a good job building these developments and bringing in professional management. They have been involved for over three years and secured funding through tax credits to provide the engine to develop these units. Things have gone along very well, the process went very smoothly and the general contractor did a good job. SMOC is a regional based community development organization based in Framingham focused on community development and housing and they do child care, fuel assistance, and head start. It is a variety of social services. They own and manage 1,400 units of housing across the state, need to have an effective constructive relationship with police, fire and inspectors and being sensitive to the political issues. If there are any issues or concerns he encouraged the Board to call him personally. Mr. Salvia and Ms. Stetson will work exclusively at the site on issues with abutters or

tenant nuisances. Mr. Gagnon added that they do not want to have issues or problems, if there is an issue they will deal with it and we need to have a good constructive relationship.

Mr. Cominskey reports that construction is substantially complete. They hope to have a certificate of occupancy by the end of February and rent up in March/April. All units are energy star certified, fully sprinklered, and they worked closely with the Fire Department and the DPW.

Mr. Salvia of Maloney has been in business for 25 years and manages over 8,000 individual apartments and over 80 properties. Fifty percent have a component of tax credit financing. Department of Housing and Community Development is the agent of the state of Massachusetts that awards the tax credits. They have a great relationship with them and the monitoring agency they use to test that they are in compliance with regard to tax credits. In December they did initial outreach effort and started having applications filed in early January. They have applications for 50% of the units that could be assigned to them, and they have 100-150 applications have come in. There is a lot of interest, however, because of income restriction limits a limited amount will fit into the income limits. Preference will be given to local employees and residents. They would appreciate any referrals and are looking at a spring final completion.

Ms. Stetson advised that she will be responsible for the day to day operation of the site once they have occupants. They have a very comprehensive screening process to make sure they attract the best and most qualified and eligible applicants. She will make sure the lease is enforced and deal with any abutter concerns or amongst tenants themselves she will be responsible for attempting resolution and complying with the tax credit regulations on the screening of the applicants.

Mr. Gagnon states that the town has been great to work with and there has been an on-going dialogue. There is a lot of oversight by the Department of Housing and Community Development and the Mass Housing Partnership to make sure everything is maintained and they perform annual inspections. This project will add to the town's 40B count as a friendly 40B.

Mr. Phillips questioned the salary range. Ms. Stetson provided the Board with an overview of the requirements, income guidelines and types of units they have available. For a 2-person household subsidized unit with two bedrooms the maximum income is \$19,200 and rent is based on their income. The maximum total is \$38,400 and the minimum income is \$35,500 for a monthly rent of \$917.00. Mr. Gagnon noted that a two-person household can earn \$30,000 to \$50,000 and the rent is 60% of the area medium. Mr. Phillips questioned what was included in the comprehensive screening and selection process. Mr. Gagnon explained that applicants are 18 years of age or over, they will perform a review of criminal background, sexual offender and credit check and a five-year landlord reference. If an applicant is rejected the applicant is allowed to meet with them and they will try to work with the applicant to the best of their ability. They will consider mitigating facts. Mr. Phillips informed the group that the Town of West Boylston has a Sex Offender Bylaw as the property may fall within the area.

Mr. O'Brien asked where would the property management be located. Mr. Gagnon explained that there will be an office at the property which will be staffed on a part-time basis and there will be a telephone number available to reach people 24-7, including the management people and the maintenance people through the answering service. Mr. O'Brien would like to see this be a successful project and questioned what they meant when they said they would like to see it work effectively for the local community. Mr. Gagnon explained that the West Boylston Housing Partnership has been very supportive and they want to build that good will as it is critical that they have a good candid professional relationship with the town municipal leaders. They need an active dialog if something goes wrong and even when things are going well. They understand this is a small community. If there are issues they want to make sure it will be open. Mr. O'Brien expressed one of his concerns, which is the upkeep of the property as we just had to spend town money for the Housing Authority building

roofs. Mr. Gagnon explained that the oversight from the Mass Housing Partnership, Department of Community and Development and Public Partnership require full capital operation and spending reserves. They have a very clear 3, 5, 10 year capital plan, which will be monitored to insure they have adequate reserves. In addition, it is included in all loan documents. Public lenders send out consultants who also review their operating systems on an annual basis. Mr. Rucho questioned the number of units and the location of their other facilities. Mr. Gagnon advised that they have a few facilities in Worcester including one at Upsala Apartments, Mount Carmel, 9 May Street and Southgate Street and they have Country Side Village in Marlborough. Within those five properties they have about 325 units. They have other properties in small towns including property in Vermont and New Hampshire.

Mr. Quist requested copies of the business cards and asked if they would do a project again in West Boylston. Mr. Gagnon indicated that they would be open to any kind of partnership. They have done first time home buyers initiative. They look at doing more home ownership and the scale needs to be appropriate for West Boylston and has to meet a need. Mr. Gaumond questioned who does the income verification. He was told that it is done through a third party verification and they do direct third party mailings and 70% of their units can be occupied by a resident or an employee of the town, or another business in the town or by someone who resided in town at one time and wishes to return to the community. Six of the units will be subsidized based on a percent of the renters income.

Tom Kane, Superintendent of Schools

Superintendent Kane reports that five years ago the School Department filed with the Massachusetts School Board Authority (MSBA) two Statements of Interests (SOI), which is the first step in any process to obtain funding through the MSBA to address school needs. When we first submitted them in 2007 it was when it was just coming off of their moratorium on school buildings. As part of our efforts in West Boylston we organized a School Building Committee to address the needs of the school and we submitted our SOI. We received notification that our SOI was placed on a waiting list and each year we have been asked to renew the SOI. This year he is submitting one SOI for the Middle/High School. We will keep our SOI for the Middle/High School roof project which we completed in 2005 and we have been advised that we could apply for reimbursement. Mr. Kane continues to include this in his SOI submittals. What makes this different is the priority of the second item, which was declining enrollment due to declining birth rates in the community and we now anticipate an increase in enrollment resulting from 40B housing projects. The third priority is the need to upgrade the school in terms of instructional spaces that support a 21st century high school. The SOI requires a vote from the Selectmen and the School Committee. The vote does not commit the town to anything and the School Committee will meet tomorrow night and take their vote.

Motion Mr. Phillips having convened in an open meeting on January 19, 2011 the Board of Selectmen of West Boylston, in accordance with its charter, bylaws, and ordinances, has voted to authorize the Superintendent to submit to the Massachusetts School Building Authority the Statement of Interest dated January 21, 2011 for the West Boylston Middle/High School located at 125 Crescent Street, West Boylston, MA which describes and explains the following deficiencies and the priority category(s) for which West Boylston may be invited to apply to the Massachusetts School Building Authority in the future: including (Priority 1) potential reimbursement for the replacement of the school roof completed in 2005; (Priority 4) prevention of overcrowding anticipated with increased enrollment resulting from 40B housing projects; and (Priority 7) addition of instructional spaces that support a 21st century curriculum; and hereby further specifically acknowledges that by submitting this Statement of Interest, the Massachusetts School Building Authority in no way guarantees the acceptance or the approval of an application, the awarding of a grant or any other funding commitment from the Massachusetts School Building Authority, or commits the City/Town/Regional School

District to filing an application for funding with the Massachusetts School Building Authority, seconded by Mr. Rucho, all in favor.

Mr. Kane informed the Board that he was notified that the MSBA recommended both of the green projects he brought forth in September

New Business

1. Review and approve schedule for May 16, 2011 Annual Town Meeting

Motion Mr. Phillips to approve the schedule as outlined, seconded by Mr. Quist, all in favor.

Meetings, Invitations & Announcements

1. Adopt an Island Program Announcement. The kickoff for the new program is February 1 and will be announced via the Town Administrator's blog and the website. Hopefully we will receive many applications

2. January 19, 10:00, Wellness Fair Meeting. On March 26th the town will hold a Wellness Fair open to all.

3. February 2, Board meeting, discussion on snow removal from sidewalks

4. February 7, 7:00 p.m. Housing Production Plan Meeting & designate a Selectman to attend. One of the goals we had in 2010 was the option of a Housing Production Plan and Central Mass Regional Planning Commission has a draft plan for our formal review on February 7. All boards and committee will be designating an individual to present them at this meeting.

Motion Mr. Rucho to designate Mr. O'Brien to attend on behalf of the Board, seconded by Mr. Phillips, all in favor.

John Westerling, Director Of Public Works

1. Summer House Safety Issues

Mr. Westerling noted that we have the 100th anniversary of Goodale Parking coming up and the Summer House has become a more prominent feature with the installation of the new courts. We have a safety issue with the roof which needs to be addressed and if it is not addressed the entire structure is likely to fall into disrepair and may collapse. Mr. Westerling will be seeking the assistance of the jail and its labor force to make those repairs. The estimate of which is less than \$1,000. The second issue is the step out of the summer house towards the courts, which is 18-inches tall and poses a serious trip hazard. Mr. Westerling intends to grade the area from the top of the step out to the edge of the wall, loam and seed the area, which he estimates will cost less than \$700 with materials. The third issue is the unprotected wall in front of the summer house which is a serious fall hazard to anyone walking along the top of the wall. The DPW has temporarily protected the area with a snow fence until a permanent solution is installed. There are two options for the fence; the first is a mesh style which will cost \$4,175 and the other is an ornamental bar fence which will cost \$5,275 installed. Mr. Westerling recommends the ornamental fencing which is more aesthetically pleasing and will tie in nicely to the existing fence atop the nearby wall.

Mr. McCormick asked Mr. Westerling if he had spoken to the Parks Commission. Mr. Westerling indicated that he was at their meeting last week and because of the funding they put towards the lights and other small projects they do not have the funds we need. He could work with Mr. Gaumond on other funding options and perhaps a town meeting article. Mr. Phillips asked if there was any discussion around how much the Parks Commission could contribute. Mr. Westerling indicated that he did not bring this to their attention to consider funding. Mr. McCormick recommends going back to the Commission to discuss any possible funding. Mr. Rucho suggested outreaching to

the Historical Society for CPC money for historic preservation. Mr. Westerling will discuss the funding with the Parks Commission and the Historical Society and report back to the Board.

2. Metering System for Sewer System

One of the things the Board asked Mr. Westerling to look into was the need to monitor our system and he thinks it is one of a three-part need we have. He has worked with LEI and Flo Assessment Services who came out and looked at the infrastructure. They came back with a cost of \$27,000 for one years worth of monitoring. The reason Mr. Westerling thinks this is a three-part need is the Board also discussed inflow/infiltration into the system and he is expecting a proposal from LEI any day. He is also awaiting a price for an overall map of the existing system.

Mr. McCormick questioned whether the town had the ability to fund the inflow/infiltration without going to town meeting as it is a spring time testing. Mr. Westerling will review his accounts and report back to the Board at their February 2 meeting.

3. Final Betterment update

Mr. Westerling reports that VADAR is putting the final touches together on the final betterment tracking software that the town will use to track its final betterment charges. They will complete that process and have a deliverable to the town which town counsel will use to create the Board's vote. It should be ready for the February meeting. The good news is the final betterment has been calculated to be \$3,825.05 per unit, a refund of \$55.23 per unit that was bettered. It also equates to refunds of \$486.30 for every unit that paid a privilege fee after July 2005 and refunds of \$59.33 for every unit that paid a privilege fee before July 2005. At the February 2 meeting the Board will have a certificate of vote and the town will send letters to the residents.

Mr. McCormick questioned how the snow budget was doing. Mr. Westerling intends to ask for emergency spending authorization at the February 2nd meeting. He added that we had a mild December, however, the first two weeks in January made up for that.

Mr. O'Brien complimented Mr. Westerling on the condition of the roads in West Boylston noting that they are in very good shape in comparison to other communities.

4. Raymond Huntington Highway

Barry Esteves join the Board for this discussion. Mr. Gaumond explained that the Esteves came in before to meet with the Board regarding severe flooding issues on their property on Raymond Huntington Highway. The flooding has prevented them from using their driveway to access or egress their property and they are concerned about flooding damage to their septic system. They maintain that the drainage under Raymond Huntington Highway was insufficient to handle the water in the area and additional pipes need to be installed under the highway to handle additional flow. There is a drainage system under the highway, designed and installed by Mass Highway, feeds under I-190, and eventually under Laurel Street. We have determined that Huntington Highway is a town road and we have subsequently applied for Chapter 90 reimbursements from the state for this road. We sent our consultants, LEI to review the situation and their opinion was that any of the culverts in the series of culvers under Huntington Highway and I-190 on both side and under Laurel Street could be a cause of back up higher up. It appears as if the drainage system is functioning as designed with some ponding of water on the Esteves' property. LEI is willing to serve as the Town's consultant to review the drainage plan if we wish. We have examined the town's culverts and found them free and clear from obstruction.

Town Counsel reviewed the matter and reports the following. The Esteves family has now showed that the flooding on their property is the results of defects in the drainage system designed or

installed by Mass Highway. The Town maintains that the water collecting on their property is not caused by the Town and they are not discharging water onto their property. The owners of the property should have been aware of this issue prior to purchasing the property and assumed the risks when they did. Even if the Town was causing the water to accumulate on the Esteves property, the Esteves family would need to show that the damage to their property outweighs the costs to make the repairs citing *DeSanctis v. Lynn Water and Sewer*. Having to upgrade the pipes under Raymond Huntington Highway and under I-190 and under Laurel Street could cost hundreds and hundreds of thousands of dollars to both the state and the town. Based upon the information counsel has reviewed, the Town has not created a private nuisance for the Esteves family and the Esteves could take a much less expensive measure to solve the issue. Mr. Westerling has nothing to add.

Mr. Gaumond added that the matter was asked to be brought before the Board of Selectmen to have it resolved. Mr. Philips noted that the Board asked for this to come back because the Esteves had sent an email. Mr. Gaumond explained that the Esteves commented on three paragraphs in Town Counsel's opinion letter. The first as that the property adjoins and is located downhill of land containing wetlands owned by the Commonwealth of Massachusetts through the Department of Conservation and Recreation. The Esteves stated that the property is level or slightly higher in elevation than the culvers going under Raymond Huntington Highway based on a topographical map they have from DCR. Counsel also stated that the flooding is caused by storms characterized as a 50-year storm. The Esteves commented that their property is not included in a 100-year storm flood area based on maps located at the town's Conservation Commission. The third issue is counsel states the Commonwealth acquired on behalf of the town an easement on a 660 square foot portion of the then vacant property to construct thereon and to use and maintain drainage structures and/or ditches and the easement is expressly referenced in the deed conveying the property to the owners. The Esteves note that the easement is included in their deed, however, the easement is at the corner of Laurel Street and Raymond Huntington Highway which is the highest elevation point on their property and has no impact on the water that is flooding their property. The easement is at the southeast corner of the property and the flood water comes from the northern section onto their property.

Mr. Gaumond added that the town's position is the town is not discharging water onto this property. The engineer says the drainage system is working as was designed and installed by MHD.

Mr. Esteves pointed out that that Town Counsel's opinion is based on the easement. There is an easement on the property, however, the issue is the lack of drainage. He has a plan of the property which he showed the Board. Counsel's letter talks about the town has the right to put a reasonable amount of water on the property the easement the town owns is at the corner and the highest elevation in the area. The water has nothing to do with the easement, which he thinks is on the plan for a fire hydrant. The issue is not enough drainage. There is one 18-inch culvert flowing into two, 48-inch culverts. The easement is at the highest portion and it is not town water. Mr. Esteves added that the water is coming down from the woods. In a heavy rain storm the culvert cannot handle the water coming off the hill and it backs into his yard and you cannot get a fire truck in. Mr. Phillips asked about a larger culvert. Mr. Westerling commented that if it was decided that it was solely an 18-inch pipe it might be \$50,000, however, those dual culverts handle the system, not just the 18-inch pipe. Mr. Esteves noted that the single 18-inch pipe goes under the road. It is not taking anything extra except two manhole covers.

Mr. McCormick added that if the town were to put in an 18-inch pipe we would have to get permission from the MHD and they could come back and say their system does not work anymore. Mr. Westerling noted that because the land is flat the pipe is flat and the water has to build up and the

head that builds up causes the Esteves problem. When MHD designed this they did not anticipate that there would be homes built there. They installed 18-inch pipes under Raymond Huntington Highway and double pipes under the north and southbound of I-190. It may not be feasible and we will still deal with flat pipes. You have to look at how many pipes have to be installed before you get no head water building and is it feasible, how many pipes would it take, what does it do to MDOT drainage downstream, and what is the impact to all the pipes down on Laurel Street.

Mr. Phillips thought the water was from the road and it is not coming from the road it is coming from the hill. He questions why the town bears that responsibility as it is a natural flow coming off the hill and not off the roadway. Mr. Esteves' reply, it is the town's responsibility because we are not flowing the water. In a heavy rain storm it is 3-4 feet of water swirling there and it backs up into his yard. Mr. Phillips' reply, we did not put the pipe in after you built your house. Mr. Esteves added if the town owns the road it owns the pipes. Mr. Gaumond stated that the town would take the position because the house should not have been put there. Mr. Esteves replied, the town gave permits for the house and it is an inadequate piping system owned by the town. Mrs. Esteves reports that two gentlemen from MDOT said the pipe was inadequate that ran under Huntington Highway and they could add another pipe. Mr. Rucho asked who put in the current 18-inch pipe. According to Mr. Westerling it was MHD prior to 1979. Mr. Gaumond, noted that there are Commonwealth cases cited by Town Counsel that the cost of repair has to be taken into consideration. You would have to make hundreds of thousands of dollars of repairs. We have not had regular occurrences of these types of flooding.

Mr. Phillips questioned whether we asked town counsel if this is all predicated off the easement as that is not the area of concern. Mr. Gaumond advised that Counsel offered to come in and meet with the Board and the easement is not necessarily the trigger. Town Counsel's letter talks about what would trigger town action. In *DeSanctis v Lynn Water and Sewer* the court held that a municipality is responsible for causing a private nuisance if a) the harm is caused by the municipalities actions, b) the harm is more than de minimus and c) most importantly, the harm caused by the municipality's actions is significantly outweighed by the cost to the municipality of alleviating the harm.

Mr. Gaumond noted that even if the town was dumping water onto the property we have to make a determination that the cost is outweighed by the magnitude of the problem. Mr. Phillips asked if Town Counsel's that the easement would be within the area of the flooding, does that change their opinion? Mr. Gaumond replied no, the case spoke to creating a private nuisance by a public entity. Mr. Westerling advised that up gradient there is a horse farm and they cut some trees and installed a barn and all that increased the run off as there has been a change in the topography. Mr. Esteves is sure it adds to the amount of water, however, it is not all because of that. Mr. Westerling added that the land is in Holden and the work was done in the mid 1970's. Mr. Etseves explained that the water floods the properties of DCR, Ericksons and his. Mr. Phillips asked if we could dig a retention ditch on the back land. Mr. Westerling feels it depends on the topography and if it fairly flat although it is on private property. Ms. Esteves noted that it floods between January and April.

Mr. Westerling explained that through the summer and the fall during heavy rains the water is absorbed and the issue is the ground is frozen during the winter. Mr. Esteves is trying to figure out the next step. Mr. Phillips does not know what the town can do. Mrs. Esteves asked what she should do in the meantime and we cannot get in or out of the driveway, will the town help us pump? The biggest issue if something happens to her family and the ambulance cannot get in or out. Mr. McCormick noted that we have drainage issues in town which people have been after us for twenty years. Mr. Esteves wonders about a low cost fix. Counsel suggested raising the driveway and the septic system.

Mr. Gaumond asked if they change their driveway location. Mr. Esteves states they cannot, it is all wetlands and it is a tiny stream nine months out of the year.

Mrs. Esteves stated that if their septic system fails, it will go into the reservoir. Mr. McCormick added that it does not appear that it is the Town of West Boylston's problem. The water flows off the hill and enters the Esteves' land. The town has a lot of water problems and we cannot be fixing everyones drainage issues. There is nothing we can do and it would be cheaper for the town to buy your house than it would be to try to repair this issue. Even if we put in a pipe we would need to put in more retention ponds and then we dump water off to Laurel Street. He does not know how we can reasonably repair this. He added that there is another huge water runoff issue in the Colonial Hill neighborhood coming off the Country Club. Mrs. Esteves ask if the town is willing to help them when the flood. Mr. McCormick added that the town could not put in a new septic system. Ms. Esteves added that in the past DCR would say call the town and the town said call DCR. Mr. McCormick suggested to Mr. Esteves that he should speak with the Fire Chief. Mr. Westerling believes the intention of the Board of Selectmen would be for the DPW to do whatever they can with access and pumping. Mrs. Esteves noted that the DPW did a phenomenal job. Mr. Esteves asked if the official town decision is that you are not going to do anything for us. Mr. Rucho commented that no motion to do anything answers the question. Mr. McCormick stated that the Board is not going to make a motion that we are going to fix it.

FUTURE AGENDA ITEMS

Mr. Phillips would like to extend an invitation to the new Sheriff to come in and speak with the Board. Mr. Gaumond advised that he has already outreached to him. With regard to the Reservoir Motor Lodge, he noted that we sent a letter advising them they need to come before the Board if they are seeking an extension and they are not here. If the town does not receive payment for their taxes and sewer charges, we will be closing the establishment.

With no further business to come before the Board, motion Mr. Phillips at 9:00 p.m. to adjourn, seconded by Mr. Quist, all in favor.

Respectfully submitted,

Approved: February 9, 2011

Nancy E. Lucier

Kevin M. McCormick, Chairman

Allen R. Phillips, Vice Chairman

Steven J. Quist, Clerk

Christopher A. Rucho, Selectman

John J. O'Brien, Selectman