

BOARD OF SELECTMEN
MEETING MINUTES
11/10/09

The Board of Selectmen met in the Town Hall, Joseph F. Bilotta Meeting Room as scheduled with Thomas Alonzo, Paula Bertram, Dave Matthews and Town Manager Kerry Speidel present, Steven M. deBettencourt and Thomas Mason absent. Meeting opened at 7:30 P.M. with the Pledge of Allegiance

PUBLIC DISCUSSION

ANNOUNCEMENTS

1. Yard Waste Days: Saturdays/October 17th thru November 21st from 8:00 AM to 4:00 PM – At the Lunenburg Landfill, Youngs Road. Acceptable material: grass clippings, bark mulch, wood chips, leaves, brush (with a diameter not to exceed 3 inches, unlimited length). Shrubbery and plantings; with the same restrictions. Any container, bags, boxes, barrels, trashcans, tarps, flower pots, etc., must be removed and taken by the resident. No household garbage, trash, or rubbish of any kind will be accepted. No materials within the Landfill area; sand, stone, gravel, etc. are to be given away or sold. Access will be restricted to the disposal area. Commercial landscapers will not be allowed to dump. Open to Lunenburg residents only.

Also, noted that as tomorrow as Veteran's Day to give thanks and honor to all the veteran's in our region and to those currently serving in the service abroad.

Cathy Clark came before the board regarding the citizens group to get rid of Unitil and wanted to clarify what they're about. The group is comprised of four communities, Ashby, Lunenburg, Townsend and Fitchburg. Noted that an individual took it upon them self to send information out that did not come from this group. This group is trying to share information and is basically a vehicle for that purpose, to communicate and make sure everyone has information from DPU and they are continuing to speak with State reps and trying to get answers to all of this. Noted area in town that continues to have outages; Valley Road / Gilcrest Street and will put this information out there. Also, noted website "getridofunitil.com". The group will be posting information on this site regarding the legislation before the state.

Chair noted that what he was trying to get across last week is how outraged he was with the DPU decision and he knows the energy and time that she and her members have put in. Noted that the Senate House bill #4329 on public utility companies passed in the house and senate unanimously, increases the ability to fine utilities, and the cap of 1 million to be raised to 5 million. In an emergency situation the Governor or Lt. Governor could put the utility into receivership. Also noted, that he will have the letter drafted for the legislature for next weeks meeting.

APPOINTMENTS

1. 7:30 PM, Interview – Leslie Lynch, Local Arts Cultural Council – Sharon Yousey, outgoing Chair of the Cultural Council introduced Leslie Lynch of 88 Beachview Road informed the board that she has been a resident for 36 years and her children have gone through the school system. She is interested in joining the council as there is a lot of good that can be done. Paula moved to appoint Leslie to the Cultural Council, Dave seconded, voted unanimously.

2. 7:35 PM, William Mish, 29 Meadow Lane Septic Upgrade – Christopher MacKenzie from Whitman & Bingham Associates informed the board that he is representing Mr. Mish. The area that will be approximately 8 feet wide by 100 feet long. Will have minimal effect on the right of way, toe of slope will be about 8 feet from edge of pavement. No deeper than about one foot, which will be along Mr. Mish's property on the right of way. Tom A., questioned a breakout and who's responsibility would it be, what liability is there, is the town liable or the homeowner. Per Kerry, the homeowner would be liable and Chris concurred; if the system were to fail the board of health would direct the property owner to repair the septic system. Chair reviewed the letters from the DPW and Board of Health (attached) and noted that they have no issue with this request. Paula motion to approve the proposed plan that would allow for the filling along the public right of way at 29 Meadow Lane, Dave seconded, voted unanimously.

CURRENT BUSINESS

1. Town Manager Updates –

- **Pratt Street – West Street Parcels Minimum Bid** – Kerry had brought this before the board several months ago and as a result of a town meeting vote in 2002, which basically was identified as the old West Street school site. The intent was to square off the town owned property and we hired an engineer to put this plan together so that we can ready this property to go out to bid. Many of the properties in this area are small lots and may need additional land to correct their septic systems. Plan has gone before the Planning Board and the ANR plan was approved and recorded at the Registry of Deeds. Involves

10 parcels that range from about 9,000 square feet to 20,000 square feet, there is no road frontage so only value would be to abutting property owner. Assessors have stated that this is classified as surplus land as it would not allow for the creation of any home lot, currently they assess for excess property at \$6,000 an acre. Kerry would suggest a \$3,000 minimum bid and would like to have this established before we put this out to bid. Chair would like a week to think about it and would like to have a chart to review and would like to have a full board before deciding. Dave questioned if there's a better way to get a sale value versus an appraised value, per Kerry that's why she had asked the question about excess land value. Per Paula it does affect the sale value as it could potentially be doubling the size of the lot. Tom A., would like to look at it as market value as the bidder may realize an increase to the value of their property by nearly doubling the size of their lots. Dave would like to get the most value for the rest of the town. Kerry will work with the Assessor's to get the information, Tom would like to see an assumption that should each property be bought by the abutting property owner what would the market value be for that property. Dave questioned if there are any plans for the remainder of this parcel and per Kerry, would be good to have a review of town-owned land and what should remain in town ownership.

- **Regional Household Hazardous Waste Site** – tabled to next week.
- **Eagle Heights Senior Housing Project – Land Disposition & Development Agreement** – Board reviewed and signed the Agreement that was forwarded by Town Counsel, Kopelman & Paige. Paul Texira (RCAP Solutions) and Jon Juhl were present. Kerry noted that several weeks ago we met with Town Counsel and the parties regarding the agreement. Not substantially different than what we've been dealing with. Mr. Juhl would like to have this approved in order to meet the timeline for the application process. Tom is fine with the agreement. Paula noted that within the document it's noted that RCAP is tax exempt and when it is turned over to the non-profit wants to understand how the tax process will commence. Per Mr. Texira, RCAP is a non profit corporation, not a non-profit. Per Jon, one of the elements is that HUD requires a PILOT agreement or a payment of taxes and is a required document that must be negotiated with the town. Taxes would have to be paid, but it's more like the PILOT. According to Kerry, PILOT's are only available for non-profits any other entity, is subject to taxes and with the Board of Assessors came up with an amount about \$27,000 that would have been assessed had this been a PILOT agreement. It is subject to real estate tax as it stands now. In the end it will be owned by a corporation that will be subject to taxes. Per Jon there will be a tax agreement as it has to be submitted to HUD and it is just a matter of the structure. For this application, HUD needs it before they make a firm agreement. Focused on the key areas as the application ended up being about 800 pages, as this is the critical component. Dave motion to approve the land disposition & development agreement, Paula seconded, voted unanimously. Jon expressed appreciation to the board and all the town boards that assisted along the way.
- **Pearl Brook** – The project requires that filed sub bids, i.e. electrical / wiring are obtained and the subs will be bidding on November 4th and the General Contractor's bids will be due on November 18th. As such, Mr. Capoccia will not be able to make a determination regarding the available funds until after bids are opened and reviewed. To be placed on 12/8/09 Selectmen's agenda.
- **Acceptance of Gift** –
- **Woodruff Farm** – today we had a meeting with Barbara Hobson from the Department of Agricultural Resources and have found out that apparently the issue with the Woodruff Farm and selling the Development Rights to the State came about at the same time as the building of the new Primary School and the town was required to do some mitigation measures because of the use of prime agricultural land. We were able to identify that they are two separate issues. The Town is still eligible to submit an application to sell the development rights and there is funding available for the state to purchase; we do have the application. If accepted the state will require that an appraisal will be done to determine what the underlying agricultural value of the property is. Right now they are allowed to spend up to \$10,000 an acre and as we are eligible we will be filling the application out. There are specialty appraisers that do this for the state, which is paid for under certain options, one would be they would reduce what they would give us for the sale of the development rights. With the issue of the primary school property, it appears that we did not complete those mitigation processes and what was suggested at the time is we would swap 6.5 or more acres out of the Pleasant Street property (40 acre parcel) as it was prime agricultural land. We are working through that issue as well, which was brought to Kerry's attention by Conservation Chair, Robert Verge.
- **Tennessee Gas Pipeline** has posted a bond and has been recorded at the Registry of Deeds, which releases all the property owners that have received this Mechanics Lien. According to Town Counsel, they spoke with Attorney Bradley Croft who represents the subcontractor in the contract with Tennessee Gas Pipeline Company. He acknowledges that he placed these mechanics liens on the residents and Town property to attract attention to this issue and to force Tennessee Gas to secure a bond for this claim. He advised counsel that on November 4, 2009, a Lien Bond pursuant to G.L. c. 254, Section 14 was recorded with the Worcester North District Registry of Deeds in Book 7061, Page 361. The bond was issued by RLI Insurance Company, a surety company authorized to do business in Massachusetts, in the amount of \$540,000. The provisions of M.G.L. c. 254, Section 14 state that the recording of a bond of a surety company authorized to do business in the Commonwealth of Massachusetts in the amount of the lien dissolves the lien. As a result of the recording of the Lien Bond, the title to the property subject to the original mechanics liens are free from the encumbrance. However, there may be other subcontractors who may have filed mechanics liens as a result of Tennessee Gas Pipeline's failure to pay their contractors and subcontractors, which could affect the title to the Town property and to residents subject to the

easement. The Town may wish to consider contacting Tennessee Gas to determine if there are other potential claims which also need to be bonded.

- **Bid was awarded for the Two Solar Beacons** that will be placed at the end of the driveway of the Public Safety Building, approximately 200 to 250 feet east/west. Contract has been awarded to Republic Intelligent Technologies.
- **Summer Street Project** On October Governor Patrick signed Executive order 514 designating all existing Economic Target Areas and we've identified the Summer Street project as a possible project for using stimulus funds; particularly for the engineered plan cost for that project. The DPW Director has had meeting with VHB, as they currently do work with both Fitchburg and Leominster. Last week notified that stimulus funds were available in the economic target areas and we are eligible to submit an application for this funding, which is a rolling application process. They're looking for shovel ready projects and as such thought it would be best to have a meeting with the stake holders to determine what would be reasonable for these projects and to determine what Mass Highway would have. Meeting has been scheduled for this Thursday, November 12th @ 2:00 PM, in the community room at the public library. Chair reiterated that this fits perfectly into the projects that are being investigated and the cost of doing this project without significant grant funds almost makes this an impossible project without grant funds. Everyone who's driven down Summer Street knows the necessity as well. Kerry noted that we have received the \$300,000 for the 40R development and may be able to utilize some of these funds and may be our one opportunity to maybe score big with the stimulus funds.
- **Reimbursement for the Ice Storm** – Representative Benson's Aide, Katie Green sent information to Kerry today that the Governor signed the supplemental budget with \$6 million for reimbursements last week. The Office of Administration and Finance is now working with MEMA to create the process for figuring out how much each town will get and how that money will be distributed to the towns. This may take a few weeks and hopefully we'll soon know the reimbursement that we can expect from the state.

2. **Minutes** - none.

Warrants - #25 10, 11/10/09 - \$285,626.98, #26 10, 11/11/09 - \$147,765.59 and #10P 10, 11/12/09 \$658,538.25 reviewed and signed.

Action File Issues – None

Contracts – Board signed the attached Memorandum of Agreement (Mediator's Recommendation) for the IBPO Local 353 (Police Contract) for 2008-2010.

3. **STM Sign Warrants** - board signed the warrants for the December 1, 2009 Special Town Meeting.

4. **Special State Primary** - board signed the warrants for the Special State Election to be held on Tuesday, December 8, 2009.

5. **Town Hall – Holiday Hours (Veteran's & Thanksgiving)** – Town Hall closed Wednesday, November 11th in observance of Veteran's Day and on November 26th and 27th for the Thanksgiving Holiday.

OLD BUSINESS

1. Committee Updates –

- Dave questioned the status of the subcommittee to look at the budget and service levels. Kerry informed him that they will be meeting tomorrow @ 6:00 PM at the Brooks House. Also informed the board that the School Committee met last week and have been looking at the budgets.
- Tom A., attended the Education Forum that held with the Acton Democratic Town Committee on future of education in Massachusetts that was held Monday November 9th in Acton. It was a very good forum, questions about budgets, regional school systems, funding methodologies for Charter Schools, and about school choice. Good open discussion from the communities that were there, well represented from different towns in the region. Also noted that the Finance Committee last Thursday, very full discussion on the budget presentation by the Town Manager and using Stabilization Funds, potential cuts in preparation for all of us to make recommendations at Special Town Meeting. They will be meeting here again on Thursday night.

2. **Ethics Conflict of Interest Law – Update – Liaison Appointment** – Town Clerk Kathy Herrick noted the changes in the conflict of interest law that became effective September 29th. What it does imposes significantly higher penalties for violations to the conflict of interest. The changes were three in particular the board of Selectmen must appoint a liaison to the Ethics Commission, Town Clerk has to make certain that everyone who is a municipal employee receives a summary of the Conflict of Interest Law and third, those deemed municipal employees must receive the summary and complete a test that has been provided by the Ethics Commission. She has sent a townwide email to town employees that provides a link and employees have until April 2, 2010 to complete the test. Difficult part is determining who is a municipal employee for the purposes of identifying a conflict. Any individual that receives a W-2 or 1099 would be subject and would have to take the test. Kathy is currently working on compiling lists with the assistance of the Selectmen's Office and the Accountant's office to determine that all those who are required to comply have received the information. Summary must be forwarded to the Town Clerk as well as the results of the Tests which she is required to keep on record for 6 years. She will have to furnish the summary to everyone every year and the tests must be completed every two years. Right now these records are being kept in paper form, at some point may be electronically. Chair noted the issue of deeming who's a municipal employee, if those people who need to comply, then who's responsible if those documents aren't collected. Is it the town's liability or the individuals? Per Kathy the responsibility to return the documents is on the individual, if there is a penalty that would be up to the Selectmen. Response from the

Ethics Commission is "it goes back to the town". Per Kathy, the difficulty is creating the list and documenting the returns. Chair questioned if it's possible for Kathy to ascertain how much time, this is and/or will take you so that we can take this back to the state legislature's. Per Kathy, that is exactly with the Clerk's Association has been working to get this information and the cost associated with this "unfunded mandate". Per Kerry the most reasonable penalty for someone who is deemed to be a municipal employee as a volunteer could be that they aren't allowed to volunteer anymore. Chair noted that these decisions come at a cost and at a time when any additional cost implications are really bad for communities. Definitely has an impact on the Town Clerk's time. Kerry would like to have Kathy put together some information on the impact to her department and will ask the departments within the town to do the same in this way we can come up with a cost just to take the required tests.

Paula asked for clarification as to who the liaison would be, does it have to be a member of this board and per Kerry it should be a senior level employee and she would recommend that the Clerk be appointed.

APPOINTMENTS/REAPPOINTMENTS

1. Appointments – Local Arts Cultural Council - Paula moved to appoint Leslie to the Cultural Council, Dave seconded, voted unanimously.

EXECUTIVE SESSION

Being no further business board voted unanimously to adjourn Regular Session at 9:04 P.M.

Respectfully submitted,

Laura Williams, Chief Administrative Assistant
Board of Selectmen

Town of Lunenburg

Department of Public Works

John M. Rodriquenz

Director

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520 Chase Road
Lunenburg, MA 01462

November 2, 2009

Lunenburg Board of Selectmen
Thomas Alonzo, Chairman

Mr. Alonzo,

I have been asked to comment on the installation of a new septic system proposed at #29 Meadow Lane our town. See: Proposed Absorption System "Upgrade" plan dated September 9, 2009 by Whitman & Bingham Associates Leominster, Massachusetts.

After visiting the site, speaking with the designing engineer, and reviewing the plan I am of the opinion that the amount of construction, (filling) within the Town right-of-way will not compromise the safety of the traveling public. Furthermore, the proposed grading should in no way negatively impact snow plowing operations.

Please feel free to contact me if I can be of any further assistance.

Respectfully;

A handwritten signature in black ink, appearing to read "J. Rodriquenz".

Jack Rodriquenz
Director of Public Works

Cc; Kerry Speidel
William and Amy Mish



Board Members

David Shea, Chairman
George L. Emond, Vice Chair
Perry Jewell, Secretary
C. Ernie Sund
John Rabbitt

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LUNENBURG BOARD OF HEALTH

To: Jack Rodriquenz

From: Jim Garreffi, Agent 

Date: October 28, 2009

Re: 29 Meadow Lane

This office has reviewed the sewage disposal plans for the replacement system at the above mentioned address. The site conditions on the property are restrictive and the proposed location for the replacement system has been deemed to be the most appropriate for the site.

The plan attached has been determined acceptable by the Board of Health and pending the anticipated State approval will be the plan permitted by the Board of Health.

If you should have any questions, please do not hesitate to contact me at the office.