

Board of Selectmen's Meeting

February 4, 2010

Present: First Selectman Gayle Weinstein; Selectman David Muller; Selectman Dan Gilbert; Town Administrator Tom Landry; Administrative Assistant Judy DeVito, Press and members of the public.

This meeting was recorded and video taped and the tapes are available in the Selectmen's office.

Ms. Weinstein called the meeting to order at 7:32pm

Pledge of Allegiance- Nina Daniel lead the meeting in the Pledge of Allegiance.

Discussion/interview/decision regarding the reappointment of Harriette Heller to the Board of Ethics for a term to expire December 31, 2011- Ms. Heller said that she worked in NYC for 25 years. She worked for special services for children and was former Mayor Giuliani's appointee and the executive director, which is commissioner level for the Mayor's Volunteer Action Center which was the liaison between the non-profit community and the City of New York. She also served under Mayor Bloomberg for three years and she took an early retirement package and retired. She has been serving on the Board of Ethics and was just asked to be the secretary.

Mr. Muller made a motion to reappoint Harriette Heller to the Board of Ethics for a term to expire December 31, 2011. Mr. Gilbert seconded and the motion passed unanimously.

Discussion/decision regarding the Town gifting the weathervane purchased by Jim Daniel for the Town to the Historical Society. Cynthia Williams said that the weathervane has been in the basement cage for many years. Jim Jamison, president of the Historical Society saw it and said it was the perfect size to put on the new building of the Weston Historical Society. Nina Daniel, daughter of Jim Daniel said that she concurred and her father would love to have it where it is being placed.

Mr. Gilbert asked if we did not know what the weathervane was worth, did we normally gift something like that. Ms. Weinstein said that this was something that was lying around the basement and did not really serve a purpose there. We were not giving away one of the Towns treasures and she thought it was a nice gesture to offer a gift, from the Town to the Historical Society considering the fact that they truly do so much for the Town as far as preserving our records. Mr. Muller said the issue of gifting is more pertinent when someone is gifting something to the Town rather than the other way around because of the potential financial obligation the Town would assume.

Mr. Gilbert made a motion that the Town of Weston gift the weathervane purchased by Jim Daniel for the Town to the Historic Society. Mr. Muller seconded and the motion passed unanimously.

Discussion/decision regarding accepting Stonecliff Lane as a public road. Ken Potash and Mario Romaldini from Stonecliff Lane were present. The Audubon Society was not in attendance. Ms. Weinstein said that the residents of Stonecliff Lane had come before the previous Board of Selectmen and they had decided not to accept Stonecliff Lane as public road since it did not meet the standards for a public road. Mr. Potash had said that the Audubon Society had some additional information so she agreed to put them back on the agenda.

Mr. Potash said it goes beyond just the Audubon Society. He had made two requests, one for public highway status but he also made a request that they take over the plowing and maintenance of the road. He had a letter from the Audubon Society and a copy of the Audubon Society website directing people to come to the 37 acre space open to the public.

Mr. Potash presented the Board of Selectmen with a draft complaint that the Town will be served with if they are denied. Mr. Potash said in 1989 the builders of Stonecliff Lane quit claimed the property, the road, to the Town. In the deed the Town had the option of making it a public road when it becomes used by the public. It held the responsibility of the seven owners for snow and maintenance of the road. Mr. Potash said it is unclear what maintenance and snow removal is. Ms. Weinstein said it did not seem unclear to her.

Mr. Potash said if you read case law about it, maintenance is different from repairs. He could make the argument that the road is in need of major repairs which is different from maintenance which is just little up keep on the road. The road is owned by the Town so in terms of what they can and cannot do on the road, they need permission from the Town.

Mr. Potash said that legally the Town attorney is wrong. The Board of Selectmen approved the road as substandard and they did that at the time because all of Lords Highway is substandard. The Audubon Society quit claimed the land in 1978 and in 1988 the Audubon Society opened up. It is about 20 years that it is being used as a public park. Mr. Potash said that he has found cases where being used by the public actually aids the claim that they are making here. The issue is what is a public use? He has found many cases that say basic pedestrian can be a public use. There is probably between 3,000 and 5,000 walkers per year that walk in and out.

Mr. Potash said that he did not think he would lose if he brought a case against the Town. He said they need to understand there is a two part lawsuit and there are two things that they are looking for. If he sues the town and wins, he is going to win that it is a public road. At that time when it becomes a public road, the Town of Weston is responsible to bring it up to code. Mr. Potash said that he found some additional cases and he feels that he has a very good chance of winning, maybe 80/20.

He said he has talked about a compromise with attorney Ken Bernhard. Instead of making it a public road the Town would take over the maintenance of the road for the

residents. He said to litigate it will be very expensive and the proposal to bring it up to code is \$200,000. The maintenance of the road is not a large expense and that's what they are looking for. He had a letter from the Audubon Society which was sent in previously but he is on vacation right now. He said he spoke to Milan Bull and having a conversation about hopefully making them a plaintiff also in this action against the Town.

One of the issues that the Town has presented to him is, if we do this for you we are going to have to do this for everyone. He said we are going to lose because there is no where else where we have a situation where we have essentially a private lane with the public use that they have. There is a public park at the end of the road and he cannot find another situation like that in Town.

Ms. Weinstein said that this summer she walked the road with Mario, another resident of Stonecliff, John Conte and Joe Lametta and pointed out what the issues were with the road. Ms. Weinstein said the road is sub-standard. There are many private roads in town that she is sure can make a case for foot traffic. If we start opening up the door to doing maintenance and snow plowing on one private road then we are obligated to do it on all private roads.

Mr. Potash said that the Town was 100 percent liable for the road. Ms. Weinstein asked Mr. Conte if we owned the road or the land underneath the road. Mr. Conte said it was his understanding that we own the land underneath the road. Mr. Potash said the issue is what is the use of the road?

Mr. Potash said that the opening of the Audubon Society park give them a very good chance of winning. Ms. Weinstein asked why the Audubon Society did not take any responsibility for the maintenance and upkeep of the road. Mr. Potash said they do not have the responsibility or the money to do this.

Mr. Gilbert said if they want us to accept the road they need to bring it up to Town standards and we will. It is not the Towns obligation to bring the road up to standard. Mr. Potash said, lets come to a compromise which would be take over the maintenance for the residents, they can craft what that means.

Mr. Romaldini said that we have ignored the legal advice given to the Town and he will pay the Town to defend against the suit that he is going to have to pay to file. Mr. Gilbert said the Board of Selectmen should make a decision based on what is in the public's best interest because they represent the public. Mr. Potash said we cannot stop people from walking on this road but we have to plow the road, maintain it, and make sure there are not pot holes on it. They are putting an expense on seven people for the benefit of the Town.

Discussion regarding road maintenance- Joseph Lametta said that he bases his decisions on the weather report and budgetary matters. He would never compromise safety. During the time that he has been public works director, there has never been a

serious bus accident or serious car accident that involved not plowing or taking care of the roads.

Mr. Lametta said that 20 years ago there were 14 guys on the highway department today he has 8 guys and 10 on the road now. He feels he short about two men. He has taken over 20 more miles of road since he has been down the 4 guys. Conn. DOT said he should have one man for every 8 miles. He does get help from outside contractor but they do not have sanders they just plow and it has been tough holding on to them.

Mr. Muller asked Mr. Lametta to walk us through what happens when we have a storm predicted. Mr. Lametta said that we have a product that we use to pre-treat. If the storm is supposed to start at 9:00pm they would go out at 8:00pm and pre-treat the roads. The first inch or two will melt. If it continues the snow, the trucks and the guys are there and when there is enough snow to plow they go out and plow it. They only reapply at the end of the storm if needed. It is all based on road temperature and air temperature.

Mr. Fuhr a resident of Deepwood Lane brought in a brochure for Magic Salt and Mr. Lametta uses Ice be Gone which is pretty much the same product. Mr. Lametta said that you can not use a lot of this product. He uses less salt now than he did when he was using sand.

Mr. Fuhr asked why the surrounding roads were better than Weston's. He asked if there is a product that we need to have that will take care of a post storm situation that might be unexpected. Mr. Lametta said that we use the best product that we can. Mr. Muller asked if there was a product that re-melts what is accumulated. Mr. Lametta said there is not a product for that. Ms. Weinstein asked Mr. Lametta to tell his guys that we appreciate what they do.

Request for property tax refunds-

Lynn Walkoff-	\$12,074.16
Mercedes Benz Financial	<u>\$1,047.25</u>

Total	\$13,121.41
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Mr. Muller made a motion to refund property taxes as stated in a total of \$13, 121.41. Mr. Gilbert seconded and the motion passed unanimously.

Open Items

Ongoing update

Grants- Gayle Weinstein- Ms. Weinstein said we should hear about two of the grants. We received a letter from the DPUC saying that they should be giving us an answer tomorrow on whether they will allow us to net meter for the fuel cell and we should also hear whether we received a fire construction grant. This is the second round of grants and there is supposed to be a third round of grants given after that.

Fuel Cell- Gayle Weinstein-

Booster Barn- Gayle Weinstein- John Conte said the foundation is in, the shell is up, tresses went up, the roof is being shingled and there are crews in there starting the interior. The carpenter has put up all the partition, the plumber was there doing his work before finalizing the plumbing before the floors go in. The electrician was there getting all the pre-wiring in and the gas company was there to get some heat in the building and take care of the appliances in the kitchen that will need gas.

They have to putting down a tile floor in the kitchen in and linoleum floor in the bathrooms. Mr. Landry said today were about \$220,000 on expense for that.

Tickler file, discuss as updated

Reimbursement from State for school projects- Tom Landry- Change orders were signed off on at the building committee on Wednesday night.

January Tax Collection- Tom Landry

Any other business to come properly before the meeting- None

Discussion/approval of the Board of Selectmen's meeting minutes of the January 7, 2010 and Special Board of Selectmen's meeting minutes of January 26, 2010.

Mr. Gilbert made a motion to approve the minutes of the Board of Selectmen's meeting of January 7, 2010. Mr. Muller seconded and the motion passed unanimously.

Mr. Gilbert made a motion to approve the Board of Selectmen's meeting minutes dated January 26, 2010. Mr. Muller seconded and motion passed unanimously.

At 8:35pm Mr. Gilbert made a motion to adjourn the meeting. Mr. Muller seconded and the motion passed unanimously.

Respectfully submitted

Judy M. DeVito
Administrative Assistant.
Approved 2/25/10