



BOARD OF SELECTMEN
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MINUTES OF THE BOARD OF SELECTMEN

Thursday, October 11, 2018 – 7:00 p.m. – Town Hall Conference Room

Members Present: Chester Deorocki, Chip Hussey, Vaughan Morgan, Jim Rolston, Paul Sanderson

Staff: Karen Anderson – Town Administrator

Chair Morgan opened the Board of Selectmen special meeting at 7:00 p.m. A roll call was taken; it was announced a quorum was present and the meeting was being recorded.

1. Weeks Library Expansion

Chair Morgan announced that the special meeting had been called due to the Library expansion project. He wanted it made very clear that neither the Board of Selectmen nor the Planning Board were anti-Library as some may think. Chair Morgan read a prepared statement into the record (copy on file).

P. Sanderson reviewed how the questions came to light. Monday, October 01, 2018: K. Anderson sent an email to Board members and Craig McLaughlin (copy on file). The email was regarding a discussion K. Anderson had with Terry Knowles. P. Sanderson explained that T. Knowles is the Assistant Director of Charitable Trusts within the Attorney General's Office. K. Anderson's report to the Board of Selectmen on February 02, 2016 was the result of an email she received from T. Knowles (copy on file). K. Anderson's email to the Board was read into the record (copy on file). These emails were sent to the Board on Monday, October 01, 2018. At the joint Planning Board/Board of Selectmen meeting on Thursday, October 04, 2018, a presentation was made. On Friday, October 05, 2018, P. Sanderson wrote an email (copy on file) stating that he thought the first task, based on the meeting Thursday, October 04, 2018, was to document all of the existing conditions on the site for the Office of the Attorney General so they could determine what, if any, violations are in place, assign corrective actions and come back into compliance. The property has to return to compliant conditions before more changes are made.

There is a ruling in place that only the Selectmen can make decisions about the real estate. The Selectmen need to make a decision about who will lead or participate in the discussions and whether or not any legal counsel will be involved in the process, and if so, who that will be.

Since the email on October 05, 2018, P. Sanderson has looked at the Subsurface One Stop paperwork available online from DES. He found an application signed by Marcia McLaughlin as well as the latest document issued by DES to Underwood Engineers dated September 11, 2018, requesting additional information to clarify design issues that must be addressed: a deeded easement must be provided; a deeded lot loading easement for the Library and Parish House; various other technical aspects about the design of the septic system; upon changes to the plan, additional review will be required. This information is available to the public on the State's website.

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P. Sanderson stated that he was concerned about this because of RSA 7. The Powers of the Directors of Charitable Trusts applies to all trustees holding property for charitable purposes. A charitable trust is defined in the statute (copy on file). The Board can be required to participate in an investigation and provide all necessary documentation. The Charitable Trusts has the power to require a person not to exercise their Fifth Amendment rights against incrimination, and require them to provide information. If it's found there are any violations, they have the ability to have the court award civil penalties up to \$10,000 for each violation; an individual would be personally liable and can't be indemnified. If we're acting in accordance to what we perceive our duties to be and that we're protected and indemnified, it doesn't apply to a charitable trust.

That's why information needs to be collected and disclosed so a determination can be made. Does the existing septic system cause this to be a violation? The septic system runs from the Parish House onto Library property. The Library receives no benefits from that septic system; P. Sanderson was unsure if that was considered a violation. He doesn't want to move forward until they've made a determination. If they were concerned about a window well in 2016, P. Sanderson was very concerned that a septic system could be a violation.

K. Anderson stated she was able to find documentation from July 1956. A verbal agreement was made between the Parish House and a Town entity. The Methodist Church sold the Parish House to the Congregational Church. There were pictures online of them getting "appropriate sanitary facilities" to the building; that was when the septic was installed to service the Parish House. Its original septic was in the back of the Library property. In 2014, the system failed; they went to DES for an emergency replacement of their septic system. They worked with the Library Director and the Building Inspector at the time to move the septic to its current location. The septic was sized for future Library expansion. There were no easements; K. Anderson signed the plan that was submitted to DES at the request of DES. There was a box that stated "this is a continuation of a long standing verbal agreement with no documentation. Approving this emergency moving of the septic continues that same agreement". There was also no discussion with the Attorney General's Office at that time. K. Anderson added this happened a few months before the window well issue.

The Church met with the Board about the window wells. The Board agreed to do an easement. A resident called T. Knowles direct and said they can't do an easement. The two attorneys worked together with T. Knowles; she said it could be called a license and they would have no problem. An easement would be a permanent right, which the Church couldn't be given. P. Sanderson stated that the plan proposed by the current Trustees would require some type of easement in order for DES to reach an approval on the proposed new septic system. K. Anderson stated the Library's new septic is totally on their own property. P. Sanderson added it was still collecting sewage from the Parish House. To the best of his knowledge, the one new septic system that was being proposed is designed to handle the effluent from the Library expansion and the Parish House. An agreement would have to be created between the Church and the Town/Library (whoever is in authority). P. Sanderson stated all of this would have to be disclosed to the Attorney General's Office to get instructions for sharing the septic. P. Sanderson described the interior of the Parish House; Chair Morgan added the proposed conference room at the Library would sit 66. He felt the information was important as it related to the septic system.

P. Sanderson stated, in his view, without receiving permission from the Attorney General's Office, the Board of Selectmen could not enter into any agreement with the Church to accept effluent from them because it's not directly a Library purpose. K. Anderson will contact T. Knowles and ask if the septic system on Library property can accept effluent from the Parish House. She will also ask what type of

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agreement is necessary. P. Sanderson added: is the current system a violation as it exists? P. Sanderson reiterated to the Board that they couldn't make the decision for themselves; it was a charitable trust. They must talk to their regulator.

C. Hussey stated it was his understanding that the original agreement recorded with DES was verbal but was unsure who it was with. P. Sanderson noted that in 1956 there was no DES. In 2014 there must have been discussions. DES did something at that time and gave permission to allow the system to exist. P. Sanderson didn't want to take any position other than he needed instructions. To him, there was the argument the effluent that is currently being received from the Parish House has nothing to do with the Library purpose. The Director of Charitable Trust will provide guidance to whether, as fiduciaries, it's a violation or not.

J. Rolston asked if the regulator gave approval when the past agreement was made. K. Anderson responded that in 2014, DES gave the approval based on the agreement; it did not go to the Charitable Trust. P. Sanderson stated that the Director of Charitable Trust did exist in 1956, but not DES; there was no documentation of discussion. C. Deorocki stated that they didn't know the answers to the questions, and they needed to move on, either way.

Chair Morgan stated there were a lot of unanswered questions, but they knew where to go to get the answers. He reiterated it was a matter for the Board of Selectmen, not any other body. The Board of Selectmen was in charge and the responsible party. He wanted to get the matter resolved as quickly as possible and move forward; it needed to be done correctly. The Board needed to go to the Attorney General's Office with these questions. Chair Morgan stated he was also waiting for comments from the Planning Board and Building Inspector. There are safety issues that need to be resolved.

C. Hussey asked Chair Morgan if he was talking about zoning issues with the Planning Board that were not safety issues and could not be enforced on the Library. Chair Morgan responded there were also safety issues that were brought up by the Planning Board. C. Hussey stated that Life Safety codes could be enforced by the Town; the Zoning Ordinance could not be enforced.

Chair Morgan stated that the Town voted for the Library expansion; he is obligated to do what the Town elected him to do. It needed to be done safely. What the majority of the people voted for is what he will go forward with, but he needs to make sure it's done safely.

C. Hussey asked if there were any other issues that needed to be discussed with the Attorney General's Office regarding this project. P. Sanderson responded to the best of his knowledge "no". They wouldn't be involved in the financing; the usage that was being proposed (Library on Library property) shouldn't be a problem. The problem was whether the existing effluent and receipt of effluent in the future would violate the terms of a charitable trust. C. Hussey asked if sewer were put in, could a sewer line cross that property. P. Sanderson felt that question should be included in the communication with the Charitable Trust. K. Anderson clarified that the question would be can a sewer line that would ultimately serve other properties cross Library property. J. Rolston requested that it be stated in the email that time is of the essence; Chair Morgan was in agreement. P. Sanderson added that they should receive the documentation of events including 1956, 2014 and 2016. The Board was in agreement to move forward. K. Anderson was given permission to use other resources for information; she wanted to check with C. McLaughlin for his documentation.

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Chair Morgan stated that C. McLaughlin could be added to the agenda for the Selectmen's meeting on Monday, October 15, 2018. C. Hussey suggested researching the Church deacons and Selectmen at the time of the original agreement.

2. Fire Department Building Committee

P. Sanderson updated the Board on the Fire Department Building Committee meeting. RFP's will be sent out on Friday, October 12, 2018. The services of the Town Engineer may be needed when the RFP's are returned. The Committee would like the ability to refer the matter to the Town Engineer for review and assistance as part of the selection process.

MOTION: P. Sanderson moved to authorize the Fire Department Building Committee to utilize the Town Engineer (Altus Engineering) to review and assist as part of the selection process for a Construction Management firm for the proposed Fire Department building. Second – Chair Morgan

Discussion: C. Hussey stated that Altus was the Planning Board Engineer; the last time there wasn't a review, there was a circle with pavers. The Town Engineer is Underwood; C. Hussey wanted a review by second "set of eyes" to make sure there were no mistakes. P. Sanderson stated that before the contract is awarded that can be done. The Committee would have no objection which engineer provided the service. It was agreed that Underwood would do the initial review and Altus would do the final review.

C. Hussey also stated that he had a real problem going forward with the bond until the Library difficulties were settled. P. Sanderson clarified this is in preparation for a potential bond. C. Hussey continued that the Board was under pressure now to get things done. P. Sanderson responded that he wrote the emails as quickly as he could, and was in agreement with C. Hussey.

AMENDED MOTION: P. Sanderson moved to authorize the Fire Department Building Committee to utilize the Town Engineer (Underwood Engineering) for the initial review and assist as part of the selection process for a Construction Management firm for the proposed Fire Department building. Second – C. Deorocki; all in favor. MOTION CARRIED

3. Non-Public Session

MOTION: J. Rolston moved to enter into non-public session at 7:37 p.m. Roll Call vote – unanimous. MOTION CARRIED

The Board returned to public session at 7:53 p.m.

4. Adjournment

MOTION: C. Deorocki moved to adjourn at 7:55 p.m. Second – J. Rolston; all in favor. MOTION CARRIED

NEXT MEETING

Monday, October 15, 2018 – 7:00 p.m., Town Hall Conference Room

Respectfully Submitted – Charlotte Hussey, Secretary to the Boards

Approved: