



BOARD OF SELECTMEN

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MINUTES OF THE BOARD OF SELECTMEN

Friday, April 20, 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; Paul Hayden – Road Agent

Chair Sanderson opened the special Board of Selectmen meeting at 4:40 p.m. A roll call was taken by the Chair; he announced a quorum was present and the meeting was being recorded.

Emergency Repairs to Great Bay Drive West

Chair Sanderson announced the Board would try to reach a temporary solution to Great Bay Drive West, which suffered further damage during the recent heavy rainstorms. There has been concern among the residents, and the Town has received some additional information. V. Morgan, K. Anderson and P. Hayden went to the site of the damage. P. Hayden put lights in the area for safety. In V. Morgan's opinion, the road is severely damaged on both sides. There is erosion by the first culvert, which he felt was the most dangerous spot. V. Morgan had Bourassa Construction and Jim Jones look at the area and provide estimates for repairs. The Board has information from Bourassa Construction; nothing had been received from J. Jones.

V. Morgan also contacted the Fire Chief asking if a fire truck could access that area in an emergency. His response was that he would rather not. It could be done in a dire emergency, but he would fear losing a truck; he didn't think the road could hold it. V. Morgan reiterated that his main concern was safety. His opinion was that the road wasn't safe and needs to be taken care of.

Chair Sanderson stated that he asked K. Anderson to contact Underwood Engineers. They are handling the project permitting through DES. He has spoken to Tim Noble, Underwood Engineers. He hadn't gone to the site but looked at pictures provided by residents. Their recommendation was to provide very temporary repairs (repairing pot holes) and do nothing further until the permitting process was complete. In addition to several options available to the Board, there is only 16' of width; outside the 16' is trespassing.

Chair Sanderson asked if there were any other options that could be discussed by the Board. V. Morgan, hypothetically speaking, asked what the obstacles would be if the road was Town-owned. Chair Sanderson responded that if it was a normal Town road with the failure of a structure (example: culvert), an emergency repair could be done and then get an after-the-fact permit from DES to legitimize the work. He noted that it would be an "in-kind, in place" replacement. In this case, there's a significant difference between what's in the ground and the engineers proposed permit and plan.

V. Morgan asked if there would be any issues with property owners on either side of the road if it were Town-owned. Chair Sanderson responded not if the Town owned a normal right-of-way (ROW). In a normal ROW that had gone through the Planning Board, there would be 50' of width, not 16'; the pavement would be 20' or 22', with plenty of road on either side to accomplish construction repairs without going outside of the ROW. He reiterated there was only 16' on this road.

V. Morgan stated he was unclear who owned the road. Reviewing the history, three previous Town Attorneys have stated if it were to go to a court of law the Town would own the road. His concern was not only a safety factor but the liability the Town could be facing. Chair Sanderson responded that the general rule in that regard was that the Town was never the guarantor on any road that nothing would happen. However, when the Town is advised there is a problem on the road, it's the Town's duty to warn.

Stuart Bauder, 21 Strongs Landing: He has spent several days reviewing documents provided by K. Anderson per the Right-to-Know Law. It was his feeling that it's been fixed in place since 1993. He continued that questions were asked regarding further information and K. Anderson had been directed by someone to stop the discussion. He questioned who asked that and what don't they want the residents to know. Chair Sanderson responded that came from him; he told K. Anderson that when responding to a Right-to-Know request, it was to documents. Dave Wolowitz was requesting certain types of legal conclusions, and Chair Sanderson felt it was inappropriate for those types of conclusions. They were entitled to every document the Town has; however, Town staff can't render conclusions on issues that are contested.

Leonard Schwab, Great Bay Drive West: In 1993, 26 roads were accepted by the Town, including Great Bay Drive East and Great Bay Drive West. In 2015, a deed was recorded from the Brackett's to the Town, giving the Town the dirt under the road. Chair Sanderson agreed with L. Schwab about the dirt under the road and the deed; however, there was 16' to work with. It can't be fixed with 16'. L. Schwab asked if a new deed was needed from the Brackett's. Chair Sanderson's response: yes.

Residents asked why it couldn't be taken by eminent domain. Chair Sanderson stated that was an option. One resident stated it was a necessity, not an option. Chair Sanderson explained that it would require finding a public need and a layout of a wider road; damages would have to be paid to the Brackett's. When asked why it wasn't done sooner, Chair Sanderson responded the Town has been trying to negotiate and that has failed. There is a procedure for eminent domain that has to be followed which involves litigation. He continued that if the residents wanted the Town to consider eminent domain, to set it up as a properly engineered, properly reviewed Town road going through the Planning Board, it would be 50' wide (the Subdivision Regulations address how roads are to be engineered and constructed).

Rather than an adversarial situation, L. Schwab asked about a meeting with all parties involved, including the Town Attorney and Planning Board, if necessary. Chair Sanderson stated he would be happy to participate in a meeting. However, the key party was the Brackett's—they own the property.

Frances Schwab, Great Bay Drive West: Stated this has been an issue for 18 years. If a fire truck can't make it down the road, it's a crisis mode. She didn't want to wait for litigation; they needed action and safety now.

Chair Sanderson reminded residents that the Brackett's deeded over the property to a 16' width. It was clarified that 18' was deeded, but only 16' could be pavement. C. Hussey explained that a 50' ROW isn't

all pavement. It also allows for utilities; pavement is normally 30'. The 50' ROW is what the Town accepts for all utilities so permission isn't needed to cross it, stack snow, put up signs, etc.

V. Morgan acknowledged that there is an emergency that needs to be addressed now. Chair Sanderson stated that if the Town owned the road, the Board would be able to take all action within the context of the ROW; that's where the Town's property interests end.

V. Morgan stated that his goal is to get this issue resolved, and doesn't want it to continue to another Board. Safety is his major concern. He proposed that the Town approve Bourassa Construction's quote and repair the road the right way. K. Anderson added that the road has been designated as an emergency lane and the Town would be authorized to do the work to keep the road open for emergency services. She added that generally during an emergency wetlands permits are issued after-the-fact.

MOTION: V. Morgan moved that the Town accept the Bourassa Construction estimate in the amount of \$53,225 and move forward to repair the road. Second – J. Rolston

DISCUSSION: K. Anderson read the quote into the record. The quote includes replacing the first culvert, removing the existing metal culvert, replacing it with the same size culvert in black PVC which should last 50 years. A copy of the quote is on file. C. Hussey clarified that the Town could only replace in-kind; if the Town is given a permit, it may change to a larger culvert. K. Anderson stated the culvert would be much higher and is being designed based on the sea rise. C. Hussey continued if that project is approved and started in six months, the \$53,225 goes "in the garbage". Chair Sanderson stated that the pending permit is based on the Underwood plan and includes the 3' bridge and larger culvert. The \$53,225 quote from Bourassa Construction would require an after-the-fact permit.

J. Rolston stated he would hate to spend \$53,000 and then rip it up within a few months. If the permit is granted by DES for the Underwood plan, there is no guaranteed timeframe. Chair Sanderson clarified because Willowbrook and Great Bay West were bid together, the Board would need to negotiate a firm price and timeframe with the contractor. K. Anderson stated that the contractor had quoted \$218,397.50. That covers from the intersection of Great Bay East and West past the last culvert.

C. Deorocki stated that something had to be done immediately; it was an emergency situation and the Town owes the safety of the people, no matter what. He wanted to discuss the other two options from Bourassa: (1) Replace the culvert, shim 530' from the culvert to the first building on the right; cost: \$16,600. (2) Replace the culvert from the intersection of East and West to the first building on the right, 950'; cost: \$21,000. Hoping to expedite the repairs, he preferred to spend \$16,600 today. If it didn't happen in a year, he'd rather spend it again next year and still be under the \$53,000.

V. Morgan agreed with C. Deorocki; tearing up \$53,000 doesn't make much sense. All Board members were in agreement that residents needed to be safe in the interim. P. Hayden suggested a steel plate be placed over a section of the road for the next week until repairs could be made. A resident reminded the Board this was their only egress in that area.

AMENDED MOTION: V. Morgan moved that the Town authorize Bourassa Construction to make repairs as quoted in the amount of \$16,600 and immediately put a temporary steel plate in place to provide a measure of safety. Second – J. Rolston

DISCUSSION: Chair Sanderson clarified that the option was to replace the culvert, shim pave 530' from the culvert to the first building on the right. In addition it will be determined if a steel plate could be put down for safety until such time as the culvert itself could be replaced. Board members agreed this was a good idea.

Chair Sanderson explained that rather than a finished coat of paving, 'shim pave' is paving that is designed to hold the surface. It's a 2" hot top layer that holds things in place; it's not meant for long-term wear. P. Hayden added that until the road is repaired, heavy trucks should be limited when possible. Tuesday, April 24, 2018, is the deadline for the wetlands permit; there were significant questions raised by DES for the engineer. K. Anderson expects there will be additional questions from DES. She added that the Underwood project can't be done without the permit; it's not an emergency. A much smaller project can be done under emergency conditions for an after-the-fact permit. DES has 90 days to process a permit request.

Cheryl Strong, Strongs Landing: She was concerned the Underwood project would fall by the wayside if the emergency repairs were made. Chair Sanderson assured her the Board had no intention of ignoring the residents in that area. A resident told the Board that they shouldn't have to pay the price for the mistakes made by past Board of Selectmen and Planning Board members. C. Hussey stated there was 18' to work with; everything will be replaced in-kind due to an emergency and the road made safer than it is right now. That's the best the Town can do at this time.

Susan Wolowitz, Great Bay Drive West: Stated this is a tragedy; it could have been taken care of long ago. If it was, the Town wouldn't be looking at \$53,000 or \$16,000. There's a document from 1993 that says the Town owns the road. She mentioned an issue that was taken care of immediately at an earlier Board meeting, and didn't understand the underlying conflict with this road.

AMENDED MOTION: V. Morgan moved that the Town authorize Bourassa Construction to make repairs as quoted in the amount of \$16,600 and immediately put a temporary steel plate in place to provide a measure of safety. Second – J. Rolston; all in favor. MOTION CARRIED

K. Anderson noted that repairs are being made under the Emergency Lane Designation.

ADJOURNMENT

MOTION: V. Morgan moved to adjourn at 5:20 p.m. Second – C. Hussey; all in favor. MOTION CARRIED

NEXT MEETING

Monday, April 30, 2018 – 7:00 p.m., Town Hall Conference Room

Respectfully Submitted – Charlotte Hussey, Secretary to the Boards

Approved: Monday, April 30, 2018