



BOARD OF SELECTMEN
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MINUTES OF THE BOARD OF SELECTMEN WORK SESSION

Tuesday, May 01, 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

Great Bay Drive West

Chair Sanderson called the work session to order, and announced it was being recorded. He thanked residents for attending. They would attempt to understand the title and history of Great Bay Drive West, and what conclusions could be collectively reached; there may be something that could help move a resolution forward. K. Anderson found all information that was available through the Planning Board. Showing on screen was Plan 0406, the original layout of the area.

RSA 229:1 describes four methods of how public roads are created. If one of those methods is not used, it hasn't been accomplished. Chair Sanderson explained the one exception: if an area has been treated as a public road by a municipality, it may be deemed to have been accepted as a public way. Responding to a question by Leonard Schwab, Great Bay Drive West, Chair Sanderson referred to a change made by the Legislature in 1968. He explained the various ways a road could be created.

David Wolowitz, Great Bay Drive West: Asked Chair Sanderson if the validity of the 1993 Town warrant produced by the Town was being questioned. Chair Sanderson responded that he didn't understand the document yet and it was part of what would be reviewed, and stated he was trying not to create any conclusions. There was further discussion about the 1993 Town warrant article asking for a vote of the Town regarding 20+ roads and their acceptance by the Selectmen; Planning Board approval was missing.

D. Wolowitz also questioned the letter the Board received in January 2018 and asked why the residents weren't informed. The letter contained a legal opinion from Town Counsel that the road is likely to be considered a Town road.

D. Wolowitz stated Chair Sanderson wrote that Peter Loughlin would no longer be used as the Town Attorney for this case, but rather as a witness. Why would the Board use Town money to hire another attorney? Further, the Town will be liable if an accident occurs on that road. It was inconceivable to him that the Town would put themselves at that kind of legal risk.

V. Morgan responded that he wasn't an attorney; what happens between lawyers at times is lost on some Board members. In his opinion, that wasn't a hidden document. It wasn't expounded upon, but was brought out at a meeting. It is public record. V. Morgan requested at the time it was received that the document be forwarded to the Planning Board so they were aware of the issue. His objective as a Selectman is to do what Town Meeting tells him to do, whether he agrees with it or not. Personally, he

did not vote during that meeting to own Great Bay East and West. It was his understanding when the residents bought their property it was in the deed it was a private road. At the last Town Meeting he attended when he wasn't a Selectman, the Town Meeting voted that they would accept Great Bay Drive East and West in its current condition, contingent upon the deeds being turned over to the Town and that it was approved by the Planning Board. During his tenure as Selectman, he had forgotten about Planning Board approval, and he was willing to say "ok, that's the way is going to be". It was recently brought to his attention that it must be approved by the Planning Board. He reiterated that he has to do what Town Meeting tells him to do. If that's to be overturned, it must be done by a court or another Town Meeting. V. Morgan continued that he wanted the problem resolved in the best interest of the Town. He wanted it resolved legally and amicably; he was not the enemy.

D. Wolowitz stated that the simple solution is to follow the Town Attorney's advice; he lays out what should be done. The simpler solution is that now that the Board knows there is a 1993 warrant article that was accepted by a Board of Selectmen, and by the concept of municipal estoppel, the acceptance doesn't prevent the Board from acting. It should be treated as records were discovered and the Board realized a mistake was made in 2005, and since 1993 has been a Town road. That makes the deeded road a Town road. The next issue was fixing the road. His suggestion was to use the Town Attorney's services to work out the construction easement with the Brackett's. D. Wolowitz understood from the Brackett's they didn't want their land in any worse or better position than it is currently, and would like to have access to their land.

D. Wolowitz agreed the Board had an obligation to do what was in the best interest of the Town. His opinion was that the Town Attorney's advice was in the best interest of the Town.

The warrant article voted on at the 1993 Town Meeting was discussed. It was noted that 20+ roads were accepted by the Selectmen, but there was no Planning Board approval. Discussion continued regarding State funds that were received by the Town for the road.

C. Hussey stated the Board hasn't told the Town Attorney to stop negotiations with the Brackett's. D. Wolowitz responded that he had an email stating "we will no longer be using Peter; we will be hiring new counsel". Chair Sanderson corrected D. Wolowitz: the email stated he would not be used as litigation counsel. C. Hussey stated his personal opinion was that the Town Attorney should continue negotiating with the Brackett's; he would be the best person to get it done.

Chair Sanderson stated that the Town owned an 18' strip of land. The Town has also gone to Underwood Engineering to bring the road up to good standard. There are certain areas where contemplated improvements cannot be constructed within the 18' area. Some landowners have given the Town temporary construction easements so improvements can be constructed. The Town hasn't been successful with the Brackett's.

The Board was in agreement that they would like to construct the engineered improvements on Great Bay West. They would like to see the issue resolved. Improvements cannot be done until the permit is received from DES, and based on the permit have enough room to physically construct the improvements.

V. Morgan asked Attorney Loughlin if he could definitively say it was a Town road. His response was "I think it is; in my opinion it is". He added this was the most complicated road he's ever dealt with. Attorney Loughlin thought there was an answer, but there were many misfires along the way; it's not simple. The vote in 2010 was the critical vote. The Town voted to accept it, as is in its present condition, subject to approval by the Planning Board. It wasn't approved by the Planning Board, but

there wasn't anything for them to do: Town Meeting voted they didn't have to bring it up to Town standards. The vote in 2010 and deeding by the neighbors acknowledged it as a Town road, and the Town has every right to maintain it. The Town was wise in taking Underwood Engineering's recommendation for a construction easement. The Brackett's don't want a perpetual easement except on the embankments and around the culverts; Attorney Loughlin felt that could be worked out. He felt the solution was close at hand to do the construction recommended by Underwood Engineering.

Attorney Loughlin, responding to a question from V. Morgan, stated they could go to the Planning Board. However, the Planning Board couldn't turn it down; the condition was "as is, where is". That would preclude the Planning Board the authority to require anything. V. Morgan questioned if the solution was for the Board of Selectmen to go to the Planning Board for approval. Attorney Loughlin didn't think it was necessary given everything that was involved.

J. Rolston stated for the record that since the 1970's when he was President of the Great Bay Home Owners Association, he felt the Town accepted and owned the road, contrary to what he was told. Attorney Loughlin's letter convinced him even more that if it went to court the Town would probably lose. He has been voting, as have his fellow Board members, to get the road fixed and fixed right. It was his hope it was done quickly and DES comes back with an approval. It's commonsense to get this done; there are residents in that area that pay big taxes and they've been putting up with back and forth for too long.

Chair Sanderson summarized: Great Bay East and West could be accepted as is to an 18' width. On West, the Town should work with the abutting landowners where necessary to obtain temporary construction easements for repair.

Tom Brackett, Brackett's Point Road: They have spoken to Attorney Loughlin frequently over the last two weeks and met with the engineer twice. He has every confidence this will be resolved. They signed some documents in 2015, and will sign whatever else is needed. K. Anderson told them a temporary construction easement was needed. Alison Brackett stated she is not getting "temporary" construction easement as paperwork; she's getting "easement in perpetuity", which is not the same as a temporary construction easement and is a major cause of the delay. The second delay: they had not asked for driveways. They want to be able to access their land without damaging the Town road on both sides (height will increase by 2' in some spots). She had asked Underwood Engineering for a gravel ramp. It would be to the Town's benefit to have a few inches of tar leading to the gravel ramp, which is construction practice. Underwood Engineering also suggested tagging trees for removal; T. Brackett would like stumps and brush removed when trees are cut. The road should be safe and accepted.

Cheryl Strong, Strong's Landing: Asked if State funds were received for Great Bay East and West. K. Anderson responded that FEMA funds were received for Great Bay Drive East when it was flooded and a culvert failed. Every year since 2005, the Board has voted to declare it an emergency lane. FEMA saw the signed document declaring it an emergency lane, and approved the work with full understanding it was a private road, declared as an emergency lane, and the culvert had washed out. K. Anderson added she was completely honest and open with FEMA.

K. Anderson pointed out that when she started in Greenland in 2005, T. Brackett had approached her about working with the Board to make a deal: those two roads in exchange for a piece of Town land; the Board said "no". T. Brackett added they were putting together a package for the Town to buy the whole thing. K. Anderson countered that it was clear to her when he offered to swap land, that he still owned the roads. T. Brackett stated he was not trying to make money on the land.

Chair Sanderson stated Attorney Loughlin's help would be needed on the language for the temporary construction easements. He suggested delaying anything further for the DES permits so language could be drafted in accordance with those permits. K. Anderson noted the easements were needed for DES to approve the permit. Chair Sanderson asked that they work with Underwood Engineering on the language for the temporary easement. K. Anderson stated that "perpetual" was added so the Town could continue cleaning the culverts, and had discussed that with Attorney Loughlin.

Concern of A. Brackett: the construction easement and the portion the Town would like easements into has gone from 3' a year ago to 8' now. Attorney Loughlin explained he tried to refer specifically to the construction drawings which don't always show all the slopes. There are embankments for the wetlands where the Town needs to have the ability to maintain those areas for safety.

Tom DeCoster, Great Bay Drive East: Asked if it would be appropriate for the Board to vote on the road as a Town road without Planning Board approval. Attorney Loughlin responded that under the circumstances and based on the facts discussed, the Board could make a motion to accept Great Bay Drive East and West as Town roads.

MOTION: C. Hussey moved to accept Great Bay Drive East and West as described in the deeds from Tom and Alison Brackett in 2015 (18' wide strip) as Greenland Town roads based on the circumstances and facts discussed. Second – J. Rolston; all in favor. MOTION CARRIED

In closing, V. Morgan stated that there isn't a Selectman he has served with that has tried to act in bad faith in this Town. The Board works hard with various meetings and different departments, and it's not an easy job. He continued that he appreciated the residents attending this type of forum. D. Wolowitz stated that he and his wife appreciated the Board's service and their work is the most important work any citizen can do. They were confused with what was happening, but never assumed anything other than good faith. They were confronted with a letter that raised concerns. He didn't mean to imply that the Board was acting in bad faith, but was trying to make the point they were heading down a path of a legal conflict that neither party wanted to take.

C. Strong asked if the next step was that the Brackett's will work with Attorney Loughlin and Underwood Engineers, and it will go back to DES for permitting. K. Anderson stated that this acceptance did not include Strong's Landing; C. Strong understood that.

ADJOURNMENT

MOTION: C. Hussey moved to adjourn at 8:05 p.m. Second – J. Rolston; all in favor. MOTION CARRIED

NEXT MEETINGS

Monday, May 07, 2018 – 7:00 p.m., Town Hall Conference Room – Rec Committee
Monday, May 14, 2018 – 7:00 p.m., Town Hall Conference Room

Respectfully Submitted – Charlotte Hussey, Secretary to the Boards

Approved: Monday, May 14, 2018