

SELECTMEN MEETING MINUTES

February 10, 2014

PRESENT: Board of Selectmen: Ted Poirier, Scott Littlefield, Gerry Taylor;
Treasurer/Selectmen Clerk Angela Cushman, CEO Jim Roberts, Tax Collector Yvonne Shaw

ABSENT:

OTHERS PRESENT: Tom McKenney, Lisa Morse, Shelley Sommer, Jeannie Metcalf

*Selectmen Ted Poirier declared the meeting open at 17:30.
Agenda approved by Selectmen.*

EXECUTIVE SESSION:

No action reported at this time.

APPOINTMENTS:

OLD BUSINESS:

1. Fire Commission. No update at this time.
2. Fire Department Budget Workshop to follow the Selectmen Meeting at 7PM.

NEW BUSINESS:

1. General Town Process Questions. Lisa Morse presented information to the Board of Selectmen regarding property owned on Bickford Rd by Lisa and her husband Steve Morse. There have been several issues over the years and they are not trying to get away with not doing anything; we know that the road needs to be widened, we know that things need to be done and are willing to do that. But there's also some process and questions that we need to have answered on certain issues. Lisa reviewed the Bickford Road Timeline report with the Board of Selectmen. The first page provides background information. If you jump to August 2011 Lisa indicated that they had owned the property for just about 6 years and deeded a lot to their daughter, Kaitlyn, who then built a house. In November 2011 they had a contract for 21.5 acres. Just before closing the title attorney questioned an illegal subdivision. When presented this to Jim Roberts he issued a letter of illegal subdivision to the LeBlancs (who the Morses purchased the property from in Nov. 2005). Gerry Taylor asked what was illegal about it. Lisa stated Ed & Sarah LeBlanc owned a large parcel (approximately 80 acres) that they sold 4.8 acres to Deb Sawyer in August 2001, 25 acres to the Cushman in December 2004 and retained the remaining 46 acres. When the LeBlancs sold to the Cushmans it created an illegal subdivision because it was 3 lots within a 5 year period. At the time the LeBlancs were under the assumption that anything over 40 acre was exempt from subdivision. But there is a little loop hole in the State of Maine that they were not aware of that as long as the property has shoreland involved in the property it is not exempt from the 40 acre rule.

And there is a seasonal brook that runs through the property that makes it shore land on the state map. The Morses purchased the 46 acres in November 2005 not knowing it was an illegal subdivision. From December 6 thru May 2012 Lisa provided the Selectmen with copies of planning board minutes. The shore land involved in the property did not come out until the LeBlancs were going through after the fact subdivision. Gerry Taylor asked who brought the shore land up. Lisa indicated that Jim Roberts brought this up. Lisa reviewed some of the planning board minutes and noted some points of concern. The minutes dated 01/10/12 state that Jim Roberts said he was not aware of it at that time and that it isn't up to the town to monitor land sales. Lisa questioned if it is not up to the CEO or assessor than who monitors land sales to prevent things like this from happening. The minutes also state that Lisa said her daughter now owns a house on an illegal lot and the building permit for it should not have been issued. Lisa stated that it was an illegal subdivision; unapproved subdivision. A building permit should not have been issued because it was an illegal subdivision. The minutes indicate that Jim Roberts returned to the subject of the daughter's house, noting that it is legal because the Morses had the right to give her the property and it has been over five years since the transfer. The minutes continue with Lisa Morse wondering if it would hold up in court. Jim Roberts pointed out that title insurance would cover something like that. Lisa referred to 8.7 Code Enforcement Office which states the CEO shall not issue any building permit if he has knowledge that a particular structure would be located in an unapproved subdivision. The minutes dated January 17, 2012 there are several references from the town attorney stating that after 5 years a purchaser of a subdivision is exempt from having going through subdivision revision if they sell their land because that piece of land is a standalone property. Lisa cannot find anything in the State of Maine or anywhere that proves that and that particular comment actually created another the loss of another sale this past December. The buyer's attorney asked where did the town council get the information that you guys can sell without going through planning board subdivision revision approval. All the information was to the attorney. Ted Poirier asked whether Lisa has gone to the Planning Board yet. Lisa stated not yet because there are a couple other issues that we need to figure out. We will probably end up going through subdivision to get this done. In the process we probably have spend over \$20,000 on legal fees and other issues and some of it is based on decisions that have been made by our CEO and town council. We are continually being told that we can sell but once we get to that point three days before closing something comes and gets questioned to the town we can't sell because now we would be creating an illegal subdivision after we have been told by town council that we can. Ted Poirier asked Lisa if she was planning to go through the planning board to follow the steps through. Lisa stated that we did not buy 40 acres thinking that we were in a subdivision having to go through subdivision. We thought we could buy our 46 acres and sell a lot every 5 years. We have owned the land for 8 years and lost three sales. We are willing to go the route that we need to go but in the meantime there are decisions being made that are affecting not only our lives but that are affecting other people's lives too. Lisa stated that the Cushmans have sold their 25 acres to someone else (a brother and sister) who intend for one of them to build soon and the other to build in 5 years and guess what they can't do that either. If they are falling under that same criteria that we are falling under they cannot do that either. Lisa stated that the Cushmans were issued a building permit in that same 3 lot subdivision, ruling

that they were exempt from any upgrades that were ever going to be required, one of them being widening the road 20 feet. Why would a 3 lot subdivision only affect us, why would we be the only ones to be required to widen the road to 20 feet when they own the exact same piece property attached to the subdivision. The Cushmans have a letter from their attorney (Shepard & Read) saying they are exempt from a subdivision meaning they do not need to widen the road or do anything. Jim Roberts signed this letter and agreed to issue them a building permit. When Lisa asked Jim Roberts to forward the letter to the town attorney to review this decision he told me he wasn't going to waste taxpayer's money. His decision had been made and it was up to me to go to the zoning board of appeals. It was already past the 30 day zoning board of appeals process so we could not go to the zoning board of appeals. We hired our attorney. By the time we found out about this building permit the time had lapsed of it being buildable because they had not done anything yet. Our attorney demanded that when the permit was re-issued that the Morses were to be notified so that we could file an appeals process. They have since sold the property. Lisa stated that I guarantee that they sold the property with this letter stating they (the buyers) are exempt from widening the road to 20 feet if they pull a building permit. Gerry Taylor asked what makes them exempt. Lisa referred to the letter from the Cushman's attorney "In its entirety, paragraph 5 of the Planning Board's Conclusions in the LeBlanc's April 3, 2012 approval/decision reads as follows" now you tell me if any this exempts them from adhering to any subdivision regulations. "5. Although the proposed right of way for access does not provide frontage for Lot 2 (the Cushman lot). Lot 2 has a deeded 50 ft wide right of way that provides access to the lot: further, while the lot as deeded to the Cushmans on December 3, 2004, did not have the 275 feet of frontage required in the Rural Forest Zone, in 2004, the frontage for back lots was determined based on the length of the right of way serving that lot. Accordingly, by the Board's after-the-fact approval of this subdivision plan, Lot 2 shall become a legally non-conforming lot of record which may be built upon without the need for a variance. As Dayton's municipal official charged with interpreting the Zoning Ordinance and granting building permits, I simply need you to acknowledge that you agree with the Planning Board's conclusion and that Mr. Cushman in fact can obtain a building permit without the necessity of upgrading the road or doing anything with respect to accessing his lot. Of course we understand that all other regulations contained in your land use ordinance or otherwise must be followed. Our point in having you sign this letter is to establish that you concur with the Planning Board's decision and will act accordingly."

- a. Lisa asked did you hear anything in that paragraph 5 where it says that they are exempt from widening the road. It just says they are exempt from having the 275 feet because their road access pertains to their road frontage. So, in December of this year when we had our land under contract our bank was not comfortable with what happened in the past the bank required the Morses to pull the building permit and hold for 30 days before they would allow the buyers to close. Lisa came in spoke with Jim and provided a building permit application and also said that they would like to put \$20,000 in escrow to guarantee that the road would be widened before the construction of the house begins. Lisa stated that Jim responded that he would need to speak to town council if he is able to do that. Lisa received a letter from Jim Roberts on December 19th denying our building permit saying the road had not been widened. There was no discussion regarding

the escrow in the letter. Lisa asked who has authority to grant an escrow account; is that the Selectmen or the CEO? Gerry Taylor indicated that is usually the Planning Board Chair. Lisa stated that because the letter does not mention anything about an escrow we have lost another sale. Because in order for us to put the \$20,000 down we needed to sell that land and put that \$20,000 down. The bank was going to hold the money in escrow until the road was widened. Gerry Taylor recalled that when he was on the planning board the process was the developer gave the money to the chairman of the board and turned over to the treasurer to set up the account. Scott Littlefield asked which road we are talking about. Wilderness Drive is the road. Lisa requested a couple of things from the Selectmen 1) Clarification from Town Council on Jim Robert's decision based on that letter. Lisa stated that her daughter's new neighbors will be coming forward with a building permit soon. And since we have already been denied a building permit these people should be required to widen that road. Lisa needs clarification that Jim Robert's decision to grant the Cushmans a building permit based on that attorney's letter is a valid one. And since I cannot get him to follow up on that saying I am wasting tax payer's money. Scott Littlefield feels that anyone coming in for a building permit from Wilderness Drive from this point on should be required to do something with the road. Jim Roberts stated the he did not have a chance to review this information; the Selectmen have not either and should not be making any decisions. Jim stated that when that last building permit was denied then Lisa should have gone to the appeals board. Lisa stated that as soon as they received the denial they lost the sale. Why would they fight appeal when it no longer exists? Lisa asked the Selectmen to review all the planning board minutes given to them and would like to meet again at their next Selectmen's Meeting to discuss this further. Ted Poirier stated they would look at the information and pretty sure that Jim Roberts would not do anything illegally. Ted is not prepared to make any decision tonight. Ted asked what do you think if you went to the Planning Board now and get a decision from them and move onto to the Zoning Board Appeals if it is not in your favor? Lisa asked Jim Roberts that right of way right next to your house that you granted to your daughter is there another house that is accessed by that right of way? Jim responded the first house (daughter's house) that is not a right of way her driveway she has road frontage. The only access to that right of way is my son's house. Road frontage for his son's house is created by the right of way. Jim stated that he did not issue or do building inspections on those houses. Lisa was wondering how that situation was different than Wilderness Drive. Lisa is requesting to be on the next Selectmen's Meeting agenda. Lisa also mentioned that after one of the last planning board meetings for the approval of the subdivision she overheard town council mention you haven't seen the end of this. Lisa feels that if the town is going to hire a town council they should make sure that everything is done so that these issues do not come up again. In the long run not only costing whoever is going through this personally it is costing tax payers money because every time you have to call him back to re-visit an issue that was not completely ratified it is taking tax dollars. Lisa would like to formally request the Town Selectmen to go through our legal budget and find out where the majority of the legal budget is

coming from, which department in this town is expensing the majority of our legal budget, which issue in the town has created the bulk of our legal expenses. She requested it go back ten years. Gerry asked was it two sales. Lisa responded yes, the first sale was 21.5 acres and the second sale was 3 acres. The first sale was for \$130,000 and the second was \$55,000. Ted Poirier asked assuming that this problem gets straightened out are you going to make another subdivision. Ted asked if her intention is to expedite and correctly re-subdivide? Lisa said yes they may be the route that they make take but there are some other recommendations that we need to take up with the planning board before they can do that. Lisa is requesting the Selectmen to review the legal expenses over the last 10 years and determine what issue and what department shows up the most. Lisa Morse was scheduled for the March 10th Selectmen Meeting.

2. RFP Audit Services. Angela Cushman, Treasurer, provided a draft RFP to the Selectmen for review. The RFP will be finalized at the next Selectmen Meeting. Angela will have a draft RFP for Waste Management for the next Selectmen Meeting.
3. Fund Balance Policy. Angela Cushman, Treasurer, provided a draft policy to the Selectmen for review. This policy is basically for the town's undesignated account (surplus). The town's undesignated account as of 06/30/13 was approximately \$606,000. The draft policy indicates the town should be at 25% of the current operating expenses then the town should be \$906,000.
4. School Board Liability. Angela Cushman, Treasurer, communicated that she will be finalizing the form to submit for a quote on School Board Liability through Maine Municipal Association.
5. Next meeting. The Parks & Recreation Committee has been scheduled to attend the next Selectmen Meeting to provide an update.
6. Road Commissioner. The Selectmen asked Mike Souliere, Road Commissioner, to remove snow from the town office parking lot. Jim Roberts also mentioned that there was a complaint about the intersection of Rt 35 & Gould Rd.

PUBLIC FORUM:

1. Time Warner update. Tom McKenney had inquired about why on the local weather channel we use to get Buxton and now we get York/Wells. Jim Roberts shared an email from Time Warner indicating that they combined hubs and that is the way it feeds now.

CORRESPONDENCE:

- 1. MMA Revenue Share

SIGNED:

- 1. 02/13/14 A/P Warrant
- 2. 02/13/14 P/Y Warrant
- 3. 02/13/14 P/Y GMFR Warrant
- 4. Requests for training/time off

OUTSTANDING ITEMS:

- 1. Hollis Rd – shouldering & tree trimming – Mike Souliere to complete work & will take about a week to complete – will complete in the spring.
- 2. Notary Public – Yvonne
- 3. Stop sign inventory – Mike Souliere
- 4. Mirror for Buda Rd – Mike Souliere
- 5. Committees – Serves as a reminder that at town meeting we need to update some of the committee information such as terms and names.

ADJOURNMENT:

Made a motion to enter into executive session to discuss a personnel issue pursuant to 1 M.R.S.A. § 405(6)(A).

Gerry Taylor made a motion to adjourn the meeting at 19:00.

*Minutes may not be verbatim they may have been paraphrased for clarity.

_____ Ted Poirier, Chair

_____ Scott Littlefield

_____ Gerry Taylor

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