

Selectboard Meeting
March 22, 2012

Meeting opened at 7:04pm

Present: Noreen Suriner, Chair; Alan Vint, Clerk; Mitch Feldmesser
Duane Pease, Administrative Assistant

Meeting was held in the auditorium to address the Harry Pease Road (HRP) issue and inform the residents what has transpired over the past few months.

Noreen addressed the residents with what the Board's expectations of conduct were to be during the meeting. There was not going to be any voting on the matter, the Board was there to share the information, each individual member would state their position, all questions from the audience were to be directed to the Board and there would be no private conversations during the meeting.

Alan spoke first; he apologized it had taken so long to bring this before the Town but it is a very complex situation and he feels it is up to the Townspeople to determine the status of the road. The Board has struggled for months and with the input of Town Counsel had arrived at a series of potential warrant articles for a Town vote.

Alan acknowledged that the road was laid out as a part of Becket in 1780, however, there is a question as to whether the road was ever accepted as a public road by either the Town of Becket, or, after 1805 by the Town of Middlefield. The road was shut up in 1886. Mr. Lynch has made a point that "shut ups" were temporary, however, there is no record indicating that the road was ever reopened for any purpose after 1886. In 1984, the Town voted to accept a list of roads as the officially accepted town roads. Only the .81 mile section of Harry Pease Road extending from Town Hill Road was accepted. In the annual Town Report for that year, the "shut up" portion of Harry Pease Road was listed under the heading of "Discontinued town roads". Based upon testimony from residents on town boards at the time, the town clearly intended to make this an official discontinuance of the remainder of Harry Pease Road and the town officials and voters believed that they were following acceptable procedure and process at the time. Town Counsel has also indicated that there appears to be no proof that the disputed section of the road was accepted by the town.

Mitch present his view next and felt it was a Constitutional issue involving the 5th Amendment which says in effect "nor shall any person.....be deprived of life, liberty, or property, without due process..." The courts have consistently ruled that closing a road constitutes a "taking" of property since it can change a buildable lot into a non-buildable lot. Therefore, if any past votes did not follow due process, they did not legally close the road. The 1984 vote did not legally close the road following due process, it just listed it as a road considered to have been previously discontinued. This leaves it to the 1886 Town Meeting vote, which was also not clear-cut.

There is a process to discontinue a road and it has to be followed. Mitch felt there were 3 options: 1) it is a road and give driveway permits; 2) don't think it's a road and defend any law suits brought and let a Judge decide, this is a coin flip; and 3) find common ground between the parties and negotiate a Private Way, not a Town Road. He stated the Board's opinion does not matter in this decision.

Alan rebutted the 5th Amendment claim saying Mass Case Law had determined if the property owners have frontage on another accepted road the property owners have not suffered a loss. The 1984 ATM may not have been technically right but was specific to HPR and the intent was to affirm the prior discontinuance of the road.

Noreen was last to speak and she felt she needed answers as it was inconclusive how the road was discontinued, it was the Town's intention to discontinue but questions if it was done properly. She suggested the closed portion could be divided into sections and handled that way with the portion in dispute that runs from Alderman Road to Jamula's property to be settled by the property owners. She was also confused by the survey pins and 8' easement. It is not clear what is best for the Town; it is challenging and there is no simple solution.

Alan said he had hope for a compromise between the property owners but did not have confidence but would be hopeful. Otherwise it will be left to the Townspeople and he would support whatever decision they arrived at. If it is a public way, the Highway Superintendent has said it would cost approximately one million dollars to bring the road up to standards; the minimum standard is the road would have to be able to carry the heaviest Town vehicle.

John Richardson said if someone decided to build a house on the road, the Town would have to fix the road.

Jenine Savoy said Attorney Lynch wants HRP as a Town road, why are other options being discussed.

Mitch advised it was the result of discussions with Town Counsel.

Howard Knickerbocker said it were legally still a road it would have to be abandoned before it could become a Private Way.

Mitch said as part of it becoming a Private Way it would have to be discontinued at the same time.

Mary Wheeler said the Board has given its opinions but what is the point, she doesn't fully understand what point is being made.

Alan said the purpose of this open forum is to answer questions the best the Board can.

Mitch said this matter started when Jamula asked for a driveway permit on HPR and was refused. He has since threatened to bring the Town to court.

Mary Wheeler replied his property is also on Alderman and Chester roads so he could obtain a permit from either of those roads.

Marie Pease said there are 5 parties with property involved in the current HPR situation and could Mitch elaborate on the 1984 vote.

Mitch replied HPR was never presented to the Planning Board as required by law.

Howard Knickerbocker said a lawyer could be good at assessing the potential damages and it all comes down to money and damages.

Alan explained case law makes it difficult to obtain damages as Mass case law has changed over the years.

Mitch said even if the Town admitted to the facts, it would still cost between \$30,000-50,000 to defend.

Howard Knickerbocker said the Town may have at least 15 other roads that could come back to haunt the Town.

Jay Swift congratulated the Selectboard on the work done so far and bringing it before the Town. There is no paperwork to definitively show the road was discontinued. As Chairman of the Planning Board, the Planning Board is responsible for holding a public hearing before a discontinuance of a road. It is a slow, methodical process to do it properly.

Mary Wheeler agreed with Jay and said the Planning Board has a map with the Attorney General's stamp and the map does not show that that portion of HPR in dispute exists.

Alan explained it says on the map "not an official map". The County map does not show HPR and both side of the dispute have submitted maps that show or don't show HRP on them.

Mitch said when the question on the road arose people were told to go the Assessors.

Alan said Middlefield does not have an official map.

Laurie Lafreniere said the Assessors have a 1996 map that shows the complete HPR.

Tamarin Laurel-Paine said only a portion of the closed road is being disputed and in 1880's shut up and discontinued were used interchangeably.

Jay Swift said to focus, not litigate, that what the courts do. We need to focus on the Town's role and the best procedure.

Sherri Venditti stated this is going on 3 years and there is a lot invested emotionally and otherwise. It is interesting to see how roads were accepted or not and it is going to effect pocketbooks of the Townspeople. Possibly could the parties sit together with their attorneys and reach an agreement they could live with.

Tim Pease said that would be great but obviously we are beyond that point, if it could have been done, it would have.

Sherri Venditti said if it is out of the questions and being driven by private parties, let the parties sue each other and also name the Town as a defendant.

Alan said he does not believe it is a private matter and the Board has to safeguard the rights of the Townspeople. It is a Town issue and he believes the Town has acted in good faith for over 100 years.

Tim Pease said it can't be resolved and it is not between Mike Jamula and Steve Harris and Tim Pease and Steve Savoy., etc, it is between mike and Steve and the Town.

Janine Savoy asked the Board if her petition had been given to the Planning Board.

Marie Pease said many people that were on the Planning Board in 1984 are still around and could be asked what procedure was followed in 1984.

Carol Verzano who was on that Planning Board said the Board did what the Town Attorney suggested. There is precedent in Land Court and they often used surrounding town's language as it was already approved by the Attorney General so as to not reinvent the wheel. The Planning Board could only recommend.

Patricia Baker said if the Town is under threat of a lawsuit her opinion is if they want to sue the Town the Town shouldn't bow to the threat and the cost should not benefit a few people.

Ray Gero stated he was on a committee in Peru in 1973 that ended up discontinuing 13 roads.

Mary Wheeler said Goshen recently went through this and it involves deconstructing the past.

Marie Pease said there should be a committed to go over roads and check on all roads.

Alan said yes there could be other problems roads.

Tim Pease asked if the discussion stops right now, what is the next step.

Mitch said it depends on what they want to pursue, the Town has not lost its right to discontinue the road if it is done in proper fashion.

Noreen stated the Board has received a petition to close the road.

Alan said he didn't agree with the petition, there should be warrant articles at the ATM. One to accept HPR, and the other to discontinue HPR. Either decision could lead to lawsuits.

Jay Swift said if the Selectboard hands the petition to the Planning Board there are specific rules the Planning Board has to follow. Alan motioned to hand Jay Swift, Chairman of the Planning board the Petition within the 45 day timeline. Noreen 2nd Alan's motion.

Mitch said he thinks it is a mistake because of timing and it would be rushed. Due process has to be followed and it would be at the end of a long Town Meeting and may not stand a Court challenge.

Alan said this is between 3 Selectboard members and the petition was presented in good faith. The Planning Board only has 45 days to act anyway.

Vote was 2-1 to hand the petition to the Planning Board Chairman. Noreen and Alan in favor, Mitch dissenting.

Jay Swift accepted the petition and note the Planning Board is meeting next Tuesday at 7pm.

In separate business the Town was informed Chester Road was going to be closed from 9pm on Tuesday until 4am on Wednesday so the bridge in Chester over the railroad tracks could have new steel beams installed. If emergency vehicles needed to pass there would be at least a 20 minute wait for equipments to be move.

Noreen motioned to approve the closing, Mitch 2nd; vote was 3-0 in favor.

Alan then motioned to adjourn the meeting, Mitch 2nd; vote was 3-0 in favor and meeting was adjourned at 9:05pm.

Minutes respectively submitted by:

Duane Pease
Administrative Assistant

Minutes accepted with/without changes

Noreen Suriner, Chair

Alan Vint, Clerk

Mitch Feldmesser