

Selectboard Minutes  
May 1, 2013

Meeting opened at 5:36pm in Town Hall auditorium

Present: Noreen Suriner, Chair; Alan Vint, Clerk; Mitch Feldmesser; Jonathan Silverstein, Town Counsel from Kopelman & Paige  
Duane Pease, Administrative Assistant

Silverstein was present to give the Town's people an explanation of the recent settlement of the lawsuits over the discontinued way and answer any questions they may have.

He took over the case after Insurance Counsel withdrew and felt this was a private dispute and the Town should not have been involved and he worked toward getting the Town dismissed from the suit and after the May 2012 Town Meeting that voted to discontinue the road, he filed a Summary Judgment Motion in Land Court. After reviewing the arguments, the Court agreed and dismissed the Town. There was still the pending case in Superior Court and the Plaintiffs were looking for "just compensation" under the Land Taking law of the Commonwealth. The plaintiff's have access to a Town road through another part of their land, using this argument Town Counsel initiated discussion with the Plaintiff's attorney to get the Town out of the Superior Court suit. If the case were to go to trial, it would have necessitated obtaining expert witnesses at a greater cost to the Town. There were many back and forth discussions and proposals and eventually all agreed to a full release of the Town.

This was a complete release of claims and the Town stipulated it takes no position in the continuing litigation. Therefore there are no further legal costs to the Town and no monetary damages owed by the Town.

Question asked by Michael Brighenti: What happens to a road when it is discontinued?  
He was advised the road reverts back to the adjacent property owners and the easement no longer exists. If it is Town owned property, the Town still owns it but it is no longer a road.

Question from Marie Pease: Did the May '12 vote that decided it was not a Public Way assist in the Land Court?

Yes, but it added problems in Superior Court in that if the Plaintiffs did not succeed in Land Court it made their Superior Court case stronger

Marie: Any other discontinued road that can cause similar problems?

Marin Laurel-Paine: Can the roads accepted in the 1984 Town Meeting vote cause future Problems?

Answers: the burden is on the parties to prove it is a public road. The Courts continue to change their approach to closed roads and their rulings.

Marin: Can driveways be constructed on Statutory Private Ways?

Answer: The Town's Zoning By-Laws say it can be on any way, the by-laws "curb cut" is not based on frontage but is there to protect access to the Town Road. Owners do not need a driveway permit on a private way, just has to show they have the frontage. If the Plaintiff chooses to build he will need: 1. A court judgment giving him the right to use or purchase an easement; 2.

He will have to comply with Planning Board requirements to upgrade the road and 3. He will have to comply with all Town building requirements.

Judy Hoag: will he have to meet the “set-back” requirements.

Answer: he must meet all “set-back” requirements.

Marie: Are there any other Statutory Private Ways in Town?

Noreen and Alan answered: not that they were aware of.

Jonathan: they are not as common as they were in prior years.

Sherri Venditti: Should a committee be formed to research prior road closings and are we likely to see Statutory Private Ways?

Answer: Road acceptance procedure seems to change every 15 years or so and you may not find Statutory Private Ways. It may be best to start with the 1984 Town Meeting vote and re-do closings properly.

Sherri: Should we go back through Town Meeting and Selectboard minutes and look at maps?

Answer: those are not definitive but can be used. There has only been this one suit since the 1984 vote. It would have to be done for each road and it is only an issue if someone makes it an issue. You have to consider the Risk/Reward of the work involved.

Marin: with the facts of this case, the property access may be to the North of the existing way and be in the ditch and over a stone wall.

Answer: the Plaintiff’s filed Preliminary Injunctions seeking use of the way and were denied by the Court. This was an indication that the Court was not sure of the way situation.

Marie: by releasing the Town, can they come back again at some other time?

Answer: No, (portions of the release were read).

Ray Gero: I was on a committee in Peru years ago and we listed all the road to be discontinued and did it in one meeting. What about the other defendants in the suit?

Answer: my job was to protect the Town; my ethical duty is only to the Town. I did have conversations with the Co-defendants counsel and would not do anything to hurt the private party’s defense.

Joe Kearns: in the 80’s we had researched the roads and it was listed in a Town Report. There are County and town roads and each has a different level before it can be discontinued.

Marin: how much did it cost to defend this?

Answer: around \$15,000, including the pre-litigation work.

Marie: how much for the prior year?

Alan: over \$9,000.

Ray: \$25,000 to get this agreement?

Alan: the past costs have been paid.

The auditorium meeting was adjourned at 6:35pm and the Selectboard meeting moved back to the office.

Meeting resumed at 6:50pm

Warrants were signed: Expensed: \$8,275.82; Payroll: \$7,201.50

Minutes were reviewed and approved with minor changes 3-0.

Selectboard will be meeting on May 6<sup>th</sup>, 13<sup>th</sup> and 28<sup>th</sup>.

Next meeting will include reorganization of the Board after the Annual Elections, Review of the MIIA Loss Control Report and discussion on a handyman.

Noreen motioned that Chester take the lead in obtaining bids on the Vocational Education transportation as they have in the past. Mitch 2<sup>nd</sup>, vote 3-0.

A Special Town Meeting will be scheduled for May 28<sup>th</sup>. Two articles will be for obtaining funds to pay Town Counsel for the successful defense of the lawsuits. Administrative Assistant will also check with the Accountant and Treasurer prior to completing the warrant.

Alan motioned to adjourn, Noreen 2<sup>nd</sup>, vote was 3-0 and meeting adjourned at 7:40pm

Minutes respectively submitted by:

Duane Pease  
Administrative Assistant

Minutes accepted with/without changes

Noreen Suriner, Chair

Alan Vint, Clerk

Mitch Feldmesser