

**TOWN OF BELCHERTOWN
BOARD OF SELECTMEN'S MEETING MINUTES
MONDAY, DECEMBER 11, 2017
Selectmen's Meeting Room, Lawrence Memorial Hall**



Present: Brenda Q. Aldrich, Nicholas O'Connor, Ronald E. Aponte, George D. Archible,
William R. Barnett

Call to Order: Chairman Aldrich called the meeting to order at 7:30 p.m. with the Pledge of Allegiance.

2) Sign Documents:

- a) Warrant #1824 was signed for \$1,906,069.85.
- b) Routine documents
- c) Approval of Minutes: Mr. Aponte moved the Board accept the minutes of Monday, November 13, 2017 as presented. Motion seconded by Mr. O'Connor. Motion passes 5 – 0. Mr. Aponte moved the Board accept the minutes of Monday, November 27, 2017 as presented. Motion seconded by Mr. Archible. Motion passes 3 – yes, 2- abstain (Barnett, O'Connor).

3) Additions to the Agenda: None.

4) Appearances Before the Board:

- 7:33 p.m. Pole Hearing #2018-03 – George Hannum Street: Mr. Aponte opened the pole hearing by reading the public hearing notice. The purpose is to install one shared pole in order to provide service to a new phase of subdivision (Magnolia Lane).

Diane Clowes from National Grid was present for the hearing. The pole will serve as the primary pole to bring power into the development.

Steve Williams, Director of Public Works indicated there is concern regarding the pole placement. The proposed pole location is in conflict with the proposed sidewalk that will serve this development. While it's not uncommon for to have telephone poles inside a sidewalk; the ADA standards allow for obstructions within sidewalks. However, sidewalks that are connected to the town center area are maintained by the department of public works for snow removal in the winter and with their equipment they need 54 inches of clear space in order to pass through so obstructions are not allowed in these sidewalks.

Mr. Williams indicated the developer is not here tonight to take part in the discussion so his recommendation is to either delay the vote or deny it altogether. He did indicate that National Grid has their policies on setting poles. Ms. Clowes did the placement of the stake without the developer being present. National Grid prefers to be on the back side of the sidewalk and as long as there is enough room for it to be on town property. She asked if she asked if she can meet with Mr.

Williams as well as the developer to stake the location. National Grid can be pretty flexible on the placement of the pole as they are bringing it underground and it already a corner pole and doesn't need to be lined up.

Mr. Aponte asked if there were any questions, comments, or concerns from the general public. As there were none, the Board discussed continuing the hearing until their next meeting which won't be until January. He questioned if this would create delays for the developer. Ms. Clowes indicated the developer is anxious to get this done. Mr. Archible had gone into the development and indicated there is no way anyone will be living in the newly constructed house in the next four or five weeks.

Mr. Williams indicated that he does not want to make a habit of what he is proposing but if the Board would be inclined to vote to allow the pole installation to his satisfaction. He has a history of working with National Grid and Ms. Clowes and if she is willing to trust his judgement he thinks the Board can vote the pole placement. It is for a new development and the only abutters are the property owners that are developing the property.

Mr. Barnett moved the Board should allow Mr. Williams to work with Ms. Clowes in determining the pole placement. Motion seconded by Mr. O'Connor. Motion passes 5 – 0.

Mr. Barnett moved to close the pole hearing. Motion seconded by Mr. O'Connor. Motion passes 5 – 0.

- 7:45 p.m. Public Hearing – Discontinuance of Maintenance, Munsell Street: Mr. Aponte opened the public hearing, reading the public hearing notice. Greg Corbo, Town Counsel was present and introduced himself. The proceeding before the Board tonight is in accordance with MGL Chapter 82, Section 32A which allows the Board of Selectmen after a public hearing to discontinue the town's obligation to maintain a public way. The Board will need to find during the course of the hearing is if the public way known as Munsell Street has become abandoned and unused for ordinary travel and that the common convenience and necessity no longer requires that said way be maintained in a condition reasonably safe and convenient for travel.

The status of this road as a public way is in dispute. The recent court case in which a judge of the Superior Court found that this is a public way by virtue of a prior Superior Court decision that had not been appealed by the town. The most recent Superior Court case is still being appealed and there is a possibility that the Appeals Court will find that Munsell Street is not a public way. However, given the findings of Superior Court to date the Board may wish to find that if Munsell Street is determined to be a public way that the Board wants to discontinue its maintenance obligations of that way because it has been abandoned by usage over time. Attorney Corbo recommended that the Board precede is to first to hear from

town officials, the town administrator and the director of public works as to their recommendations and reasons as to why the Board should vote in favor of discontinuing maintenance of this way. It should be opened up to members of the public to offer comments either for or against the Board finding of discontinuance and finally the Board should deliberate and vote on their decision. Attorney Corbo indicated that the Board is simply discontinuing the town's obligation to maintain this roadway as a public way, to remove snow and ice, to fix road defects but not changing its status to the extent that it is a public way, and the town disputes that, but if it is a public way it will continue to be a public way even if the Board votes to discontinue maintenance. The public will have the same right of travel over this way, abutters will have the same right to use the way to access their property as they did before and the only difference is the town is not going to be responsible for snow and ice and the town is not going to be liable for any injuries that may occur as a result of that usage.

Ms. Aldrich asked Mr. Brougham to add to the discussion. The road in question was originally recognized as a road to Pelham connecting Route 202 and Knight Street in Pelham. It has gone through a number of transitions in over 100 years. It was believed to have been discontinued in 1908 with a very clear recording of an action where a certain section of the road from Gold Street to a point certain beyond the Munsell cemetery was acknowledged as a public way. When he was hired as the DPW director in 1993 there was a legal challenge sometime thereafter. On the other end the north or west end of this road there were assumed benchmarks to the discontinuance that were challenged and proven to not be accurate so the town did what it needed to address the claims in that lawsuit and opened up a section of South Gulf Road. Since then it the town's opinion has been that the road between Munsell Road where it ended by the old Farmer homestead to South Gulf Road was discontinued. The recent court case that Attorney Corbo mentioned disputes that is currently under review. In the entire time that Mr. Brougham has been employed by the town there have been zero contributions from the town for its maintenance. It has not been graveled, graded, plowed, had brush cut, removed snow, controlled ice. It is essentially a path through the woods that is becoming less and less passable even with a four-wheel drive vehicle. Absolving the town's liability of the road relieves the town of any potential liability for personal injury or personal property and if the Board does vote to discontinue maintenance it does not mean it is in perpetuity. It does not change the current status of the lawsuit that is questioning the status of the road in terms of whether or not it is a public way and it does not deny anyone who has property holding beyond the point of discontinuance or maintenance right to pass or access to their property.

There are a number of large tracks of land beyond this point that are primarily timber lands. The Cowles Company owns a significant part. He believes the Conkey's have some and it makes its way out to South Gulf Road and Gulf Road where there has been some recent development. All abutters were made aware of the Town's intent.

Ms. Aldrich asked Mr. Williams for his comments. He is extremely concerned about the liability on this road. Even though the court's decision is under appeal he would be very concerned if someone damages their vehicle or suffers some sort of bodily injury that they would be looking at the town very quickly for damages. He strongly agrees with the recommendation from town counsel and would like to see the Board discontinue the maintenance. He agrees with Mr. Brougham that this doesn't mean that it's permanent. The town needs to see the outcome of the appeal. If the property owners along the roadway desire to upgrade the road for future development he understands they have that right. It would be an opportune time to make negotiations based on plans rather than speculation. The road upgrade would depend on the potential developable lots and the amount of traffic flow. There are things that need to be taken into consideration such as would it be a through street or only service a few building lots. There was a very small portion of the end of the road that was upgraded recently that is also included in this abandonment. It is 10 ft. wide presently but doesn't mean that it can serve more than one or two houses. He would rather see the road abandoned now and negotiate later. One way to make sure no-one gets hurt now is to post the road as travel at your own risk and that is a requirement of an abandonment.

Attorney Corbo asked if he could ask a few questions of Mr. Williams. He questioned the length of the road in question. Mr. Williams indicated he is not sure as he did not measure it. Mr. Brougham believes. Mr. Brougham stated it is over 2,000 feet between 2,600 and 2,800 ft. He questioned when the last time was that Mr. Williams had tried traveling over this portion of the road and the condition of the road at that time. Mr. Williams was on the road today and had Selectman Archible with him at that time.. He indicated it is 4-wheel drive access; he was in a pickup truck. The road is snow covered as we just had some snow. They got turned around about a third of the way into it because there are areas that are not traversable at this point. He was asked if an emergency vehicle such as an ambulance could make it down there. He was told no. He was asked if this road had maintained would it be a road that residents would use to get from one part of town to another. Mr. Williams indicated that if it was open and maintained in its entirety it would as it would connect existing roadways. He was asked if had ever been used to that purpose. Mr. Williams replied not for ordinary travel but maybe for people on ATV's, people out 4-wheeling, joy riding. Attorney Corbo asked Mr. Brougham if in his time working for the town if this road had ever been used in that manner. Mr. Brougham stated it had not. Attorney Corbo questioned if anyone has ever asked for the road to be improved or to maintain the road so that it could be used in that manner. He was told no.

Selectman Barnett indicated he is on the Hampshire Council of Governments and they are supposed to vote on county roads if they are going to be used by someone else. He wonders if it's been looked into if this is a county road or not. They have to approve any changes and he would hate to see a decision made if it wasn't determined that this is not a county road. Attorney Corbo indicated that records

show the road was discontinued by the town in 1908. He is not aware of any record of this ever having been a county road. Subsequent court decision has not rested on it being a county road but rather a practice of the town of making it a public way of the town. He is not in possession of any records to suggest this was ever a county road. Selectman Barnett believes it should be looked into just to make sure.

Ms. Aldrich opened the hearing to the public.

Attorney Michael Pill was present representing Cinda Jones and her brother Evan and W.D. Cowles, Inc. He confirmed that the Board had the documents that he asked the stenographer to mark as exhibits. He explained the legal process and suggested the Board suspend the hearing. He wants to mediate a settlement as Ms. Jones does not want litigation. The Board stated they will continue on with the hearing. He suggested that Attorney Corbo gave misinformation. Attorney Pill indicated if the Board discontinues the maintenance it becomes a private way and not a town road.

Attorney Corbo stated that Attorney Pill is making a complex issue out of a relatively straight forward process. Attorney Pill objects stating Attorney Corbo is cutting him off.

Rich Barry, an abutter and one of the parties in the appeal disputes the condition of the road. He believes it is passable and drivable. He sees other cars on this portion of the road. There are no ruts in the road. There are two lots that he is waiting to develop once the court's decision has been reached as to whether or not it is a road. He believes the road should be maintained and not discontinued.

Attorney Pill disputes the extent of liability. His recollection is that the maximum liability is something like \$5,000.

Mr. O'Connor stated it's a public access, private way in the statute that Attorney Pill stated previously. Attorney Pill agreed and further indicated that the frontage is being taken away from property.

Shane, the Cowles forester, states he has been included with Cowles property management for years. His last access to Cowles Land off Munsell was back in 2012 for a timber harvest. They improved the road at that time. They had log trucks coming in at that time. They've allowed snowmobilers on the property. There have been issues with people dumping stuff there and that is on record with the police department. Hunting is also allowed on the property.

Attorney Pill raised the issue of the pending appeal. The town is petitioning to abandon maintenance on a road while we are under appeal. He feels we are trying to get out of our obligation to allow development on this property.

Mr. Barry stated he is not hopeful for any settlement with the Town. He will spend whatever it takes to resolve this issue. He has 650 ft. of road frontage and he intends to do whatever he needs to do.

Mark Timms, an abutter on the opposite end of Munsell indicated he walks on the road and has seen questionable activity. He sees recreational use on this road (ATV's). He sees it more of a road path. He sees it as a non-accessible roadway. His concern is if the Board votes to discontinue maintenance will the police continue to patrol the area? Attorney Corbo stated there is no standard definition of what constitutes a public way. He addressed the intent of the discontinuance. Chairman Aldrich stated that the policing will never stop.

Attorney Pills suggested that Attorney Corbo is misleading the Board. Attorney Corbo rebutted stating that Attorney Pill is paid to represent his client and that he is attempting to disparage his credibility and impugn his integrity for personal gain and to coerce the Board into making a decision that they believe is more beneficial to them. He has laid out to the Board the legal standard as he is aware. The nine page document Attorney Pill sent out tonight at 5:00 p.m. with no time to prepare any type of rebuttal. He is aware that some of the cases cited are inapplicable to the situation in front of the Board. He suggests the Board decide the case on its factual merits based on the legal standard set forth in the statute. A decision to discontinue maintenance of a road is not irrevocable.

Chairman Aldrich told Attorney Pill how he has treated Town Counsel has been despicable. She feels he has disparaged him and has come short of calling him a liar with what he has been telling the Board. She doesn't find it to be proper behavior in this forum.

Mr. Barry questioned if this decision is appealable and if so where. Attorney Corbo indicated he does not know if it appealable.

Selectman Aponte questioned Mr. Williams and/or Mr. Brougham as to whether the town provided any maintenance on this road; if public safety used it as a short cut; or if the public used it as a short cut. He was told the answer was no to all three instances. He feels we should discontinue maintenance as it codifies what has been in existence.

Attorney Corbo asked if Mr. Williams could comment on the pictures that Mr. Barry presented of the road. Mr. Williams indicated they were only a very small portion of the roadway. Mr. Barry indicated it was 1800 ft. of the road. Mr. O'Connor indicated it is not the condition of the road that is in question but the use of the road. The road is not used by the citizens of Belchertown on a daily basis.

Mr. Williams questioned Mr. Barry in that he was saying there is 1800 ft. of roadway and wanted to know if the pictures are a representation of the 1800 ft.? Mr. Barry indicated it is a representation of the 1800 ft. Mr. Williams stated he

respects Richard Barry, Cinda Jones, and Shane but feels we have good counsel tonight and the decision is reversible so the Board should move to abandon maintenance and negotiate later. He feels we need to make a distinction.

Attorney Pill suggested that Cinda Jones will file a lawsuit which will be ordered to mediation and we can discuss a settlement.

Chairman Aldrich indicated she is closing the public hearing.

Mr. Aponte moved to close the public hearing for the discontinuance of maintenance on a portion of Munsell Street. Motion seconded by Mr. O'Connor. Motion passes 5 – 0.

Board Discussion – Mr. Aponte feels discontinuing maintenance codifies what has been in existence for decades. The road is not used for ordinary travel.

Ms. Aldrich recognizes the contributions of Jones-Cowles for years. However, this road has not been used for travel in many and has not been maintained by the Town.

Mr. Barnett questioned the legality of moving to discontinue before we hear on the Town's appeal.

Mr. Aponte feels the Board needs to do what it needs to in order to protect the Town.

Mr. Aponte moved that the Board: (1) find that the portion of the way known as Munsell Street starting at the point shown as "End Roadway Pavement 2" Overlay", or as Station 11+00, on a plan entitled "Roadway Improvements Plan & Profile," prepared by Sherman & Frydryk, LLC, dated 6/20/14 (which point is also approximately 2,165 feet from Gold Street), and terminating at its intersection with Gulf Road to the extent that such way is deemed to be a public way, has become abandoned and unused for ordinary travel and that the common convenience and necessity no longer requires (to the extent it ever did) said way to be maintained in a condition reasonably safe and convenient for travel; and (2) declare that the Town shall no longer be bound to keep such way in repair, the extent it ever was so bound. Motion seconded by Mr. O'Connor. Motion passes 5 – 0.

5) Discussion/Action Items:

- a. Accept Auxiliary Police Office Resignation: Mr. Aponte presented the details to the Board. Stephanie Cusson is resigning as an Auxiliary Police officer effective December 4, 2017 to take a position with the Hamden Police Department. A letter will be sent to Ms. Cusson thanking her for her service to the town.
- b. Appointment of Deputy Tax Collector: Mr. Barnett presented the details to the Board. Ms. Banner, the Treasurer-Collector is requesting the re-appointment of the Deputy Tax Collector. Mr. Barnett moved the Board re-appoint Arthur P. Jones to

the position of Deputy Tax Collector for the period of January 1, 2018 through December 31, 2018. Motion seconded by Mr. Aponte. Motion passes 5 – 0.

- c. Vote to Renew Liquor Licenses: Ms. Aldrich presented the details. Ms. Aldrich moved the Board vote renew and endorse the liquor licenses for 2018. Mr. Aponte added that it be with the understanding that all license holders have their certificate of good standing prior to receiving their license. Motion seconded by Mr. Barnett. Motion passes 4 – yes, 1 – abstain (Archible).
- d. Endorse 2018 Licenses: Mr. Aponte moved the Board endorse all other 2018 licenses with the understanding that they have their certificate of good standing. Motion seconded by Mr. O'Connor. Motion passes 5 – 0.
- e. Executive Session – MGL Chapter 30A, Section 21, Subsection 6: Mr. Aponte moved the Board enter executive session at the conclusion of their regular session pursuant to MGL Chapter 30A, Section 21, Subsection 6 and not to reconvene in open meeting. Motion seconded by Mr. O'Connor. Roll call vote: Aldrich – yes, O'Connor – yes, Aponte – yes, Archible – yes, Barnett – yes.
- f. Miscellaneous Matters:

6) **Town Administrator's Report:**

- He does not have a firm date on the retirement of the Council on Aging Director. Mr. Korzenowski will be meeting with the retirement board and once he has done that he will give his date. The office has advertised the position.
- Also pending is the Conservation Administrator's retirement notice and the office is working on posting that notice as well.

Ms. Aldrich indicated she met with the Council on Aging last week and brought to them the idea of what the Board wants to see regarding the committee to select the new director. They would like to have three members of their board on it (Bob Farrington, Maura Guzik and Donna Bozoglos). Between the three of them there is one with a nursing background, a banking background and a financial background. Ms. Aldrich believes the search committee should include these three members from the Council on Aging.

Mr. Aponte is concerned about having three members of the Council on Aging on the search committee. He is okay with two members but not three. Ms. Aldrich indicated that it would be two Council on Aging members, two at large members, Gary Brougham, the police chief or his designee, and a clergy member. Ms. Aldrich and Mr. Brougham will discuss the committee makeup. Mr. Brougham indicated that the new on site manager of Christopher Heights is an ordained minister so with the close association between the assisted living and the Senior Center it is something to think about.

- Mr. Brougham informed the Board that the Patrick Center is no more. Demolition and has been completed and cleanup will be done by the end of the week.
- The extension of Front Street and the Grantham access road were paved today in despicable conditions. He is disappointed in the outcome

Mr. O'Connor questioned if Pride was not happening until the next construction season. He was told that Mr. Bolduc is fully permitted and Mr. Brougham believes that he has chosen to hold the

project off until the spring. The Community Room at the Police Department was packed with toys and bikes which will stay in the Town.

7) **Review of Weekly Mail:** Reviewed, no discussion held.

8) **Individual Board Members' Reports:**

Mr. Aponte: He met today with Mr. Brougham, Mr. Terry from the EDIC, Claire O'Neill and an attorney at Mass Development with regards to restrictive covenants for future sales of the EDIC land. In a scenario where a parcel of land is sold to a purchaser that is not tax exempt and subsequently years down the road they sell that property to a tax exempt organization thus that particular parcel could not be taxed which is against the tenants of the State School land. Further discussion will be held.

Ms. Aldrich: Thank you to the Belchertown Police Department and the boy scouts who held a tremendously successful toy drive at the Belchertown Police Department this past weekend.

9) **Questions from the Press:** None.

10) **Adjournment:** Meeting adjourned at 9:10 p.m.

Minutes submitted by Gary L. Brougham, Town Administrator

Board approved/endorsed: Jan. 22, 2018

Board of Selectmen - Town of Belchertown

Endorsed by a majority:

Brenda Q. Aldrich, Chairman

Ronald E. Aponte
Ronald E, Aponte

Nicholas O'Connor
Nicholas O'Connor

George D. Archible
George D. Archible

William R. Barnett
William R. Barnett