

**MINUTES**  
**MONDAY, SEPTEMBER 18, 2006**  
**REGULAR SESSION**  
**SELECTMEN'S MEETING ROOM, TOWN HALL**  
**7:00 PM**

**CALL TO ORDER**

A regular meeting of the Board was called to order in open session at 7:00 PM in the Selectmen's Meeting Room at Town Hall. All members were present. Town Administrator Tom Younger and Assistant Town Administrator Jeff Conti were also present.

**QUESTIONS FROM TOWN RESIDENTS**

There were no questions.

**ACTION BY APPOINTMENT**

*Discussion of Woodfall Road Land Transfer Agreement*

Mr. Younger explained that the land exchange agreement and the declaration of covenants and restrictions have been approved by Town Counsel and are ready to be signed and submitted to the Belmont Country Club for their approval. There will be a 30-day window to finalize the terms of the declaration once the land exchange agreement has been signed. There are no major issues outstanding.

The Board decided to sign the land exchange agreement but not the declaration just in case there are further changes.

The Board moved: to sign the land exchange agreement.

Motion carried unanimously (3-0).

Mr. Younger indicated the RFP for the Woodfall Road properties is mostly drafted. Community Development Director Glenn Clancy said there are some engineering and survey tasks related to permitting that need to go forward before the RFP is released, which will clarify details that bidders will want to be apprised of.

*Opening of the Town Meeting Warrant*

A Special Town Meeting will be scheduled for Monday, November 13, 2006. The Warrant for this meeting will close on Tuesday, October 17. The closing date is the due date for articles to be submitted to the Selectmen.

The Board moved: to open the Warrant for a Special Town Meeting for Monday, November 13, 2006, and to close the Warrant on October 17, 2006.

Motion carried unanimously (3-0).

Possible items for the Warrant include: zoning changes, appropriations (Chapter 90 and Chapter 70 additional state aid), and land disposition.

#### *GIS/Sewer Presentation*

Glenn Clancy, Sewer and Stormwater Committee Chair Ralph Jones, Tim Richardson from the Light Department, and consultants from Faye, Spofford & Thorndike (FST) appeared before the Board.

Mr. Clancy began by giving an overview of the development of the Town's GIS system. Originally begun by the Light Dept, the database will now be shared by a number of Town departments.

Nasser Hajo from Viewpoint Software, a local company that has been working with the Town, gave a demonstration of the GIS system. He explained that GIS is a great tool for sharing information between communities and between departments. So many issues the Town addresses have a geographic component. GIS is a central databank that allows the storage of many kinds of data in layers that can be efficiently accessed.

The base layer is a parcel map which has the locations of buildings and information about the properties. Other layers such as the water, sewer, and electric grids, can then be built from the Town's records and superimposed on the base layer along with aerial photos. These layers give the ability to drill down and obtain detailed information for any point on the map, including for example customer service information from the Water and Light Departments, and assessing information.

Mr. Richardson said that the Light Department has developed an electric switching program that provides important information in the event of a service issue. Employees can use a standard Microsoft Access database to enter information and the switching program is updated in real time when the information is modified. When a customer calls in with an outage, employees can pull up the map and know which other customers will be affected, and make a list for notifications. In the future it will be possible to integrate electricity usage data for the properties.

Mr. Clancy added that the possibilities are endless. Every department in Town will be able to consider how GIS might help with what they do. For example, Recreation could have a layer that shows subscribers with pool memberships.

Justin Gould of FST gave a presentation on sewer and storm drain modeling. In order to create the model, the team physically went around town with a GPS unit and located

every manhole and imported the data into GIS. Then this data was integrated with the Town's existing records. The Town needed a model which would be compatible with the MWRA's model. The model contains flow information from the state's GIS system as well as water consumption data and rainfall data. The model will be refined to allow more precise location of infiltration and inflow (I/I) locations (which are not easy to spot because they do not necessarily experience the consequences that occur downstream) with the result that remediation dollars can be focused there. It is possible to model where flooding locations will be during certain levels of precipitation down to individual manholes. FST plans to improve the modeling by adding 20 temporary flow meters to supplement the 2 MWRA meters that are currently providing data.

*- Feasibility Study of Pumping Station Solution for Winn Brook Sewage Flooding*

FST showed a map of the tributary area for the Winn Brook sewer main connection indicating which neighborhoods are draining into the area, followed by a hydraulic profile for Cross Street during the major storm in May. If a property has a fixture such as a basement laundry sink that is below the surcharge level, they will experience a backup during such an event.

There was discussion of illegal connections in which homes are draining stormwater into the sewer system. The Town has made a major effort to eliminate these connections.

Once the flow metering data upload is complete, the model will be able to simulate the effect of different ways of avoiding the surcharge flows in the Winn Brook area. For example, installing a pump station at the sewer main connection on Channing Road; an off-line storage tank; upstream flow diversion; and/or I/I removal. The simulation will show if these ideas would help the problem or simply move it to another location within the Town.

*- Discussion of Winn Brook Sewer*

The flow metering will be done in the spring of 2007 when heavy rain conditions and high water tables from thaw are most likely. The feasibility study could begin before this and then be refined when the new data is available. FST can create a scope of work within the next week for such a study and present a proposal to the Selectmen's Office.

The Board asked where the funding will come from. Mr. Clancy said it could come from the sewer enterprise fund or from Community Development's professional services budget for hiring consultants.

A resident asked if neighboring communities are working together on this effort. Selectman Brownsberger said Arlington, Belmont, and Cambridge are working together and Cambridge in particular has mounted a \$100 million effort to separate their groundwater from the sewer system.

It was agreed that Mr. Clancy would work with FST to develop a proposal for feasibility study for a combination of measures that would eliminate the problem of sewage backups in the Winn Brook neighborhood and report back to the Board of Selectman as soon as reasonably possible.

### *Town Administrator's Report*

Mr. Younger reported on the following items:

- The state Executive Office of Transportation is holding a bike path planning meeting in Boston. Selectman Brownsberger agreed to attend.
- The new Fire Headquarters has opened. The new Center Station will open September 27 and all the old stations will have been vacated.
- Our Lady of Mercy church property is being offered publicly for sale.
- Habitat for Humanity will break ground on the Brighton Street house on September 26 at noon. Chairman Solomon will attend.
- Pleasant Street paving from Trapelo Road to Concord Avenue has begun – this will include curbing and sidewalks. It will take about two weeks to get the binder asphalt down before the road can be fully re-opened.
- Verizon is upgrading the Town's phones for Caller ID at the police department.
- The RFP for the Harvard Lawn Fire Station has been issued with a deadline of mid-October for proposals to be received.
- Police Chief Search – resumes are coming in and being narrowed to candidates with appropriate experience. The deadline for applications is October 13, after which preliminary interviews will be held, followed by an assessment center for qualified candidates. More interviews will take place in November for the top 3-5 candidates.

### **ACTION BY WRITING**

#### *Central Fire Station - Purchase & Sale Agreement*

Town Counsel has drafted a purchase and sale agreement and submitted it to Burke and Company for approval. Brian Burke appeared before the Board to discuss the agreement. He explained that the only remaining issue is the terms of the land disposition agreement. Mr. Burke said he is comfortable with the deed restriction for preservation of the façade.

There was discussion of a “reverter” clause in which Burke would have to sell the building back to the Town for the original price if the building is not complete after a certain amount of time. It was noted this was not in the RFP but arose from a suggestion the Board had expressed at a previous meeting to address concerns about the completion of the project.

Burke said the biggest factor in the time frame for the project to be completed is the elevator contracting. The elevator has to be complete and the utilities installed before

sidewalks and restaurant construction. His initial estimate from start to finish for the project was one year.

The Board explained that its concerns stem from the significant delays with the “Pink Building”. Burke explained that on that project the Town’s building department failed to process their application for some time and then later halted the project and required Burke to submit new plans for the foundation to continue.

In the interest of expediting the remaining issues, the Board agreed to continue this meeting of the Board until 2 PM on Wednesday, September 20, with legal counsel for both sides present in order to finalize and sign the purchase and sale agreement.

## **OTHER**

The Board agreed to make its November 20<sup>th</sup> meeting tentative for now because Chairman Solomon may be out of town.

Selectman Brownsberger reported Belmont’s share of tri-community water monitoring costs due is approximately \$7,000. The money will come from the Sewer Enterprise Fund.

The Board moved: to ask that monies be applied from the Sewer Enterprise Fund for Tri-Community water monitoring costs if the Town Accountant approves.

Motion carried unanimously (3-0).

The Board agreed to meet with the School Committee soon to discuss health care collective bargaining.

There was discussion of the land parcels on Sherman Street whose status is unclear. Mr. Conti and Mr. Clancy are researching to determine whether in fact the Town actually owns these parcels.

There was discussion of Dr. Leo DeNatale’s efforts to convert the third floor of his building into a rental apartment and possible zoning changes.

The Board moved: to refer the issue to the Planning Board for their consideration.

Motion carried unanimously (3-0).

The Board moved: to enter into executive session to discuss potential litigation and subsequently to return to open session.

Motion carried unanimously (3-0).

The Board entered executive session at 10:03 PM.

*(During executive session, no significant motions were made.)*

The Board returned to open session at 10:20 PM.

The Board moved: to recess the meeting until 2 PM on Wednesday, September 20, 2006.

Motion carried unanimously (3-0).

**The Board returned to session at 2:08 PM on Wednesday, September 20, 2006.**

Brian Burke of Burke & Company, his attorney Kevin Kerr, and Town Counsel Kathleen O'Donnell appeared before the Board to discuss finalizing the purchase and sale agreement for the Central Fire Station.

Ms. O'Donnell stated that the area of contention between the parties is centered on the land development agreement (LDA).

There was discussion of the historic preservation restriction. The Selectmen reiterated that the goal is to preserve the exterior of the original portion of the building including all four walls and the tower. Mr. Karr said there is a concern about boilerplate indemnification language which did not seem to be relevant for this particular case. It was agreed that the attorneys will work out mutually acceptable language on this.

There was discussion of the possible need for a new manhole if Burke pays for a sidewalk bump-out. It was agreed this will not be part of the formal agreement but will be discussed later in the process.

Ms. O'Donnell reviewed the land development agreement. Mr. Karr said Burke did not initially feel there should be an LDA because it was not mentioned in the RFP, feeling that a deed restriction would serve the purpose. It was agreed to try to work with the LDA as the current vehicle and try to resolve the differences over it.

There was discussion of the question of a construction performance bond against completion of the project, and whether the proposal security bond already supplied by the proponent serves this purpose and obviates the need for an additional bond. The Board stated that the purposes of proposal security and construction performance are not the same. There is also disagreement over the performance schedule – the current draft reads an 8 month time frame - and whether it should specify a definite time frame for completion of construction. Burke prefers the wording “reasonable diligence” which echoes the language of a building permit. Ms. O'Donnell said if a date is not specified it is hard to understand what criteria would be used to call a performance bond. The Board offered a 15 month construction timeline window before the bond could be called. Burke agreed to the 15 month timeline for some form of penalty if the project is not completed,

but did not agree on the format of a bond. Ms. O'Donnell added that the 15 month could even be extended based on extenuating circumstances.

There was discussion of Burke's proposed deletion of a non-transferability provision designed to prevent the project from being 'flipped' to another developer with a different use for the property. Burke felt that they should be allowed to transfer provided that the recipient be bound by the same terms under the RFP. However, they have no intention of flipping the property. The Board said that Burke was chosen partly because of their experience and resources and that a different entity might not carry this confidence. It was agreed to keep the non-transfer provision but to change language that restricted Burke's ability to refinance without the Town's consent.

It was agreed that if the Town incurs costs related to enforcement of the agreement, Burke will be responsible to pay those costs only if the Town is successful in any legal challenge or appeal. Once this was agreed to, the Town agreed to drop language requiring Burke to indemnify the Town against any liability, reasoning that beyond enforcement costs no such liability is likely to arise once the sale has been completed.

Having reached these agreements, the only remaining points of difference were a) the need for a land development agreement at all, and b) the need for a performance bond. Mr. Burke explained that he would have liked the terms discussed to be added to the RFP as an addendum rather than in the separate document of the LDA. However, Burke is now comfortable with the LDA as agreed except for the issue of the performance bond.

Burke would prefer to pay a penalty for non-completion rather than having to tie up money in a performance bond that could otherwise be put towards completion of the project. It was clarified that a \$75K performance bond would cost \$7500. The Board feels that the RFP requires a performance bond, although the wording is admittedly ambiguous.

The Board requested that both parties caucus privately on this matter for a brief period.

The Board moved: to enter executive session to discuss the value of real property and subsequently to return to open session.

Motion carried unanimously (3-0). The Board entered executive session at 3:17 PM.

*(During executive session, no substantive motions were made.)*

The Board returned to open session at 3:25 PM.

Ms. O'Donnell stated that the Town proposes to eliminate the performance bond and impose a \$75,000 penalty if the project is not complete after the 15 month period stated in the construction schedule.

Burke agreed to this. Having agreed on all issues, the parties expressed their intention to revise the text immediately and sign the agreements. The closing date will be 60 days from today at which point the full purchase price will be received by the Town.

While waiting for the agreements to be revised, the Board discussed a memo from Planning and Economic Development Director Jay Szklut on issues related to the Uplands 40B affordable housing proposal and how to address concerns over the potential increase in sewage flow.

Mr. Szklut appeared before the Board on this matter. He clarified that the Zoning Board of Appeals (ZBA) is looking for guidance from the Selectmen on this issue. The discussion was whether to ask for a storage tank to be put in to handle the excess flow or to request a money payment to compensate, or some other solution. The Board felt that it would be preferable for the developer to put in a storage tank to handle its own excess sewage and prevent it from entering the Winn Brook neighborhood and the Town's system during a storm rather than simply paying the Town to deal with the problem. In this scenario, the developer is not contributing to improve the Town's sewer problem but is not adding to it either. The Board also discussed asking the ZBA to negotiate some form of work or money from the developer to address the Town's infiltration and inflow (I/I) issues.

Mr. Szklut said the ZBA needs to understand whether the Board's priority is to try to use this opportunity to fix the Winn Brook situation or simply to insulate the neighborhood against further damage. Selectman Brownsberger said it will be a year before the Town will even know how much the proposed Winn Brook remediation, which the Town is committed to anyway, will cost, and it makes no sense to try to tie that in to this project. It is only meaningful to insulate the neighborhood against further stress on the sewer system from the project by means of a storage project. Any additional payment for I/I would not be applied to the Winn Brook solution but to the Town as a whole.

The Board moved: that the Selectmen continue to believe that the Belmont Uplands site is not appropriate for housing; that if the Zoning Board of Appeals decides to allow housing to be built at the Belmont Uplands site, the Selectmen feel that the development should be as small as possible; and that any such housing development at the Belmont Uplands site should be designed with a feature such as a storage tank or other means to guarantee that it will not add to the sewage flow in Belmont during a storm event.

Motion carried unanimously (3-0). The Board asked that a copy of its vote be given to Mr. Szklut to share with the ZBA.

The Board moved: to sign four copies of the Central Fire Station purchase and sale agreement and a rider that incorporates the terms of the land development agreement.

Motion carried unanimously (3-0).

The Board and Mr. Burke proceeded to sign the documents. The LDA itself will not be executed until the property deed is finalized.

The Board adjourned at 4:17 PM.

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Thomas G. Younger  
Town Administrator