

**TOWN OF HAMILTON
BOARD OF SELECTMEN
NOVEMBER 3, 2014**

The Board of Selectmen met at Hamilton Town Hall at 7:00 p.m. on Monday, November 3, 2014 with Scott Maddern, Jeff Hubbard, David Neill, Jennifer Scuteri present. Town Manager Michael Lombardo, Town Counsel Donna Brewer, DPW Director Bill Redford, Town Moderator Bruce Ramsey, FinCom Chair Rick Sprenkle also present.

Call to order

Scott Maddern called the meeting to order at 7:00 p.m. and acknowledged that Bob McRae had passed away.

Public Comment

None.

Introduction of new FinCom appointment by Town Moderator

Town Moderator Bruce Ramsey introduced Nick Tensen as his appointment to the Finance and Advisory Committee for a full term that expires in 2017.

Town Manager's report

Town Manager Michael Lombardo reported that a survey is on the Town website regarding community support for uses for the Patton Homestead. DPW Director will be meeting with neighborhood group regarding the Essex Street pathway to discuss segments in preparation for spring work. Lombardo is working with a firm on the Finance Director recruitment. Town has wage and classification study underway that will provide up-to-date information for the position. Depending on timing of study results position could be posted in the next two weeks at the current range (the wage for the position could be adjusted). Three finalists have been interviewed for the Community Coordinator position and references are being pursued to reach a hiring decision to bring a candidate on board soon. The North Shore Coalition is discussing idea of regional public health agency relative to pro-active planning for emergency response and regional events. MAPC is scheduling a meeting to discuss this idea with area municipal managers to foster better service and cost effectiveness.

Chairman/Selectmen reports

David Neill, Jeff Hubbard and Jennifer Scuteri acknowledged the passing of Bob McRae and his contribution to Hamilton.

PRESENTATION

John McWane of The Hamilton Foundation will provide an annual report to the Board of Selectmen

John McWane provided an annual report on how The Hamilton Foundation (started in 2005) provides financial assistance to pay a bill for a family in need once a year. Also, that the pledge letter for the Foundation (paid for by a member of the organization) was going to be sent out in the Town's water bills.

CONSENT AGENDA

Maddern read items on Consent Agenda.

- Approve Deputy Tree Warden report
- Lift water ban
- Declare 3 items surplus
- Sign **Form 43** for Change in Hours for **Hamilton Convenience** to adopt retail sale of malt and wine on Sundays starting at 10 a.m.
- **Approve Minutes** – October 14, 2014 Regular Session and Executive Session; October 20, 2014 Regular Session

Discussion ensued about correction statement in October 20, 2014 Regular Session minutes and the Board decided to hold these minutes until its next meeting. Maddern entertained a motion to accept the Consent Agenda except for the October 20, 2014 Regular Session minutes approval. Hubbard so moved. Neill seconded the motion. VOTE: 3-0-1 since Scuteri did not attend the October 14, 2014 meeting.

AGENDA

Bill Redford, DPW Director to update Board on front stair repairs, plowing & sanding on private ways, and proposed water main replacement in Woodland Mead

Bill Redford postponed his front stair repairs update. He explained that the late notice to private way residents on the snowplowing operation was due to him being in the position for just six months. Hamilton has 123 public ways and 64 private ways (of which 20 are in Asbury Grove) and 24 have fewer than four homes. The Town's by-law specifies that Hamilton will not plow or sand private ways with four or fewer homes. To comply with the by-law Redford sent notices to residents living on private ways where there were four or fewer homes and private ways with more than four homes that had recorded restrictions where homeowners/abutters are responsible for plowing. Letters were sent to five private ways with fewer than four homes that the Town had been plowing and to 19 private ways with fewer than four homes that the Town had not been plowing indicating that Hamilton would not plow this year to comply with by-law. Redford has heard from a number of residents.

Letters to residents living on private roadways with more than four homes where there was no restriction explained that if a signed petition was received from residents with condition that the Town is not liable then plowing would continue. Redford had recommended to the Town Manager that the Town comply with the by-law for no plowing on private ways with four or fewer homes, and for the private roadways with more than four homes and restrictions Hamilton should consider plowing this year and give residents an opportunity to clear the restriction with the Planning Board or remove the restrictions from deeds and/or agreements.

Lombardo noted that the Board has to decide how the Town should plow private ways relative to compliance with by-law. There is a process for going before Town Meeting to potentially make changes in the by-law. He referred to his experience working in multiple municipalities where typically services are not provided for private ways and an exception has been made in Hamilton with dividing line at more than four houses.

Town Counsel Donna Brewer provided background about how the by-law was adopted in May 1998 joined with a ballot question. The statute M.G.L. Chapter 40, Section 6(c) gives towns the right to plow private ways. A constitutional provision prevents municipalities from spending public funds for the benefit of private property (private ways). The Legislature gave towns a mechanism under certain circumstances to plow and sand private ways for snow and ice. The limitation in the statute is private ways have to be open to public use as a minimum. If a private way is not open to a public use then it is not eligible for plowing and sanding under the statute which supersedes the by-law. Also, the Town Meeting imposed further restrictions on what private ways could be considered for plowing and sanding (i.e., with four or fewer houses).

Kenny Allen spoke to plowing of Bass Road with three houses and Birch Road with 9 houses and raised the issue of public safety especially if a fire occurred. Jane Magro, Pierce Avenue, spoke to her private way having three houses and always maintained by the Town. She suggested the by-law be amended and mentioned research she did on her deed that did not refer to the road being private. Margot Killoran mentioned criteria for not plowing private ways determined at Town Meeting and conditions of private ways relative to public access and time it takes to plow a private way being up to 25 minutes as specified by former DPW Director Steve Kenney. Robin McMath, Pierce Avenue, noted that documentation for her property states this is not a private way. Andrew St. Pierre, Black Brook Road, acknowledged the professionalism of Town employees and right of way on his road where there is access to ECTA trail system so there is public use of road. Seth Roberts, Bass Road, suggested his road should be continued to be plowed by the Town and mentioned public safety.

Brewer noted that statute was adopted in 1943, and explained SJC opinion about how it was constitutional to allow plowing on private way, that private ways can be closed to the public and are open to people who have right to use them. Public ways occur due to acceptance actions by the Town going through statutory process followed by Town Meeting. She reiterated that a public way has to be accepted by the Town and by-law describes what abutters have to do to bring the road up to public way standards, and process includes public hearings and Town Meeting vote. Lombardo explained how Town officials were in favor of plowing but need to be in compliance with by-law.

Rob McKean, Woodland Mead, suggested due to time of year the Town could plow this year and bring up issue at ATM. Tom Barrett, Black Brook Road, noted that his private way has seven houses, hydrants were installed by Hamilton, and residents signed easement with Town. Doug Smith, Fairfield Drive, spoke to his private way having three houses and shared concern about public safety if road is not eligible for plowing and sanding and suggested a by-law amendment. Rick Fiery, Carriage Lane, suggested that late notice to residents did not work so the Town should plow the roads it did last year. He mentioned that developer did not finish his private way and agreement is between landowners. Carrie Bailey, Dentali Road, suggested Town work together with residents to develop a solution for entire Town on private way plowing issue.

Hubbard and Neill expressed interest in public safety and the Town continuing to plow the private ways that have been historically. Hubbard suggested by-law be addressed at Town Meeting. Neill recommended maintaining status quo. Scuteri spoke to compliance with the by-law and importance of private way being open to the public if it is going to be plowed by the Town, liability for Hamilton if plowing happens and an

accident occurs, and that Town Meeting could amend by-law if there is no significance about 4 houses or less. Brewer concurred about liability, and how circumstances are different for private ways especially if one is gated relative to public access. She offered to advise the Board about risk to the Town in Executive Session. Discussion ensued about obligation to citizenry and compliance with by-law where a Woodland Mead resident asked about Town's legal exposure if private way is not in good enough shape for travel by emergency vehicles. The Board decided to discuss the matter in Executive Session to get confidential legal advice from Town Counsel to form a decision as to whether or not the Town should continue to plow and sand private ways.

Discussion with Redford was on Phase II of water main replacement project occurring now. The proposal to replace water main in Woodland Mead is due to health concern associated with almost a mile of vinyl-lined asbestos concrete pipe, and bleeder valve used for 15 years or more where a large amount of finished water is poured into the ground. Also addressed was the precedent set by replacing a water main in a private way, and that a new water main would be installed. Funds have been authorized by ATM and suggestion is moving forward that property owners provide easements in similar cases so the Town could maintain water mains up to the property line. Redford noted that the Woodland Mead property owners had voted to support granting an easement regarding their water main.

Hubbard, Scuteri and Maddern expressed support to move forward with Phase II to replace the water main at Woodland Mead. Maddern read excerpts from a letter from Marc Johnson who was unable to attend the meeting who noted that the infrastructure belongs to the Woodland Mead property owners so he did not support the replacement of the water main. Discussion addressed how the developer of the subdivision limited the size of the water main and did not complete the pipe loop but dead-ended it and it was going to be maintained by private property owners. It was noted that the whole Town is paying for water main repairs.

Maddern entertained a motion for the Selectmen to authorize the Town Manager to enter into an easement with the Woodland Mead residents. Hubbard so moved. Scuteri seconded the motion. VOTE: Unanimous.

Discuss FinCom appointments: Michele Stecyk

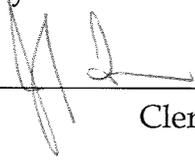
Maddern entertained a motion to nominate Michele Stecyk as Finance and Advisory Committee member. Hubbard so moved. Scuteri seconded the motion. VOTE: Unanimous.

Maddern noted that the Board would postpone discussion on Town Manager review process and goals, Regional Emergency Communications, and joint Selectmen's meeting with Wenham, replacement of American Legion Pool at Patton Park.

Maddern entertained a motion at 9:13 p.m. to enter into Executive Session not to return to Open Session for the purpose of obtaining confidential legal advice related to private ways. Scuteri so moved. Hubbard seconded the motion. Roll call vote: Neill, yes, Scuteri, yes, Maddern, yes, Hubbard, yes.

Respectfully submitted by Jane Dooley, Minutes Secretary

ATTEST:



Clerk