

Selectmen's Meeting Minutes

Tuesday, December 12, 2006

Present: Selectman Bowles, Maxfield, and Ives.

Also present: Police Chief, Code Enforcement/Compliance Officer Bob Fiske, Road Agent David Rice, Fire Chief Jeff Burr, Planning Board member Bob Ordway, and Conservation Commission member Dan Geiger.

Chairman Bowles called the meeting to order at 6:30 PM.

- I. Selectman Maxfield moved to approve the Selectmen's Meeting Minutes of Tuesday, December 5, 2006 as presented. Seconded by Selectman Ives. All in favor. Motion carried.
- II. The Board met with Police Chief, Code Enforcement/Compliance Officer Bob Fiske.
 - a. Mr. Fiske discussed the turn pocket on Route 106 at Staniels Road.
 - b. Mr. Fiske presented the Board with a letter from the American Red Cross Blood Drive thanking Janice Morin for organizing the event. The Board commended Ms. Morin and all those involved for efforts and hard work.
- III. Chief Burr stated he did not have anything new for the Board.
- IV. The Board met with Road Agent David Rice.
 - a. Mr. Rice advised the Board there were a couple of culverts that needed to be replaced on Lovejoy Road and Berry Road. Chairman Bowles asked if Mr. Rice would check the culvert on Lesmerises Road and North Village Road. Selectman Maxfield discussed the culvert on Currier Road near Alan Minery's property.
 - b. Selectman Maxfield asked if Mr. Rice was going to pursue a new truck for the Highway Department. Mr. Rice said he has obtained some quotes. He said the truck he is looking to replace was a 10-year truck, which has lasted 17-years. Mr. Rice said the truck and body quotes so far are estimated at \$120,000.00. He said there might be some parts at the shop for the plow. Discussion ensued regarding increase in costs due to the new EPA regulations. Mr. Rice advised the Board that he needs to look at adding another fuel tank because the new trucks use ultra low sulfur fuel due to the new catalytic converters.
- V. The Board began their review of weekly correspondence.
 - a. The Board reviewed a memo from Engineer Jason Gallant to CPM Constructors regarding the Cross Brook Road Bridge Project.

- b. The Board received a petition for the Town to accept a portion of Bee Hole Road from Joe Bohi. The Board will hold a public hearing on January 9, 2007 at 7:00 PM.
- c. The Board received a memo from Planning/Zoning Secretary Donna White regarding the Wellington Way Properties letter of credit.
- d. The Board received the December 6, 2006 Zoning Ordinance Workshop Meeting Minutes.
- e. The Board received a memo from the Office of Energy and Planning regarding FEMA Flood Mitigation Assistance Grants.
- f. The Board received two certificates of continuing education for Jeff Burr.
- g. The Board reviewed past due ambulance bills. Selectman Ives moved to forward past due ambulance account # 33671, in the amount of \$177.43 to collections. Seconded by Selectman Maxfield. All in favor. Motion carried.
- h. The Board received a regional impact notice from the City of Concord relative to a cell tower.
- i. The Board agreed to hold their first budget hearing on January 16, 2007 at 7:00 PM.
- j. Selectman Maxfield moved to implement the Town of Loudon Private Road and Release Form. Seconded by Selectman Ives. Chairman Bowles stated Code Enforcement presented this form to the Board. This form is to clean up issues with Class VI Roads and Private Roads. This form will be recorded with the Merrimack County Registry of Deeds. All in favor. Motion carried.

- VI. Chairman Bowles opened the Public Hearing regarding the petition to accept approximately 5, 418 feet of Greenview Drive as a Town Maintained Road. Chairman Bowles read the public notice for those present.
 - a. Chairman Bowles asked petitioner Claire Crowley if she had any comments that she wanted to make. Attorney Tom McCue introduced himself and stated he is representing Ms. Crowley. He gave a brief overview of Greenview Drive. He stated the road was done in three phases, has gotten all approvals from Planning/Zoning, and has been reviewed by the Engineers. Mr. McCue discussed the issue with the 14th Tee of the Golf Course being across the road, which has an easement in place. He went on to say that Mr. Leombruno, owner of the Loudon Country Club has placed fencing along the property to allow for one golf cart crossing. Mr. McCue stated he had spoken with Steve Roy regarding being an abutter to the right-of-way, and discussed surveying that has shown there is no encroachment on Mr. Roy's property.
 - b. Dan Geiger stated he was here representing the Conservation Commission as some of the abutters had contacted the Conservation Commission for their input. Mr. Geiger said that this project has had numerous wetlands violations, drainage violations, ESMI Soils placed

on the property that should have only been on commercial property, which is now on some of the residential property, and some of the violations were never resolved. He went on to say there was never a hydrologic model or drainage plan done. Specs were never shown regarding if the culverts were sized correctly. Mr. Geiger said that if the road is changed over to a Town Road, there might be requirement changes that could affect wetlands and change water chemistry. He stated the Conservation Commission advises caution and feels that until a number of issues are addressed the road should remain private. Mr. Geiger said they would like to see detailed drainage plans in the areas where erosion has been occurring. He stated the Conservation Commission is willing and available to work with the Boards and the Road Agent to address these issues. Mr. McCue advised those present that regarding the ESMI soils placed on the property, the resolution was each deed has a notation that ESMI reprocessed soil is placed on the property. He said to the best of his knowledge, DES has been there and he does not believe there are any outstanding issues.

- c. Attorney John Eisner stated he was representing William Leombruno, owner of The Ledges Golf Links, Inc. He said that Mr. Leombruno has concerns regarding his business if the road is accepted as a Town Road. Attorney Eisner said that there is a 100-foot section of the road that is owned by Mr. Leombruno under The Ledges Golf Links, Inc. Mr. Leombruno stated he wanted to clarify something that Attorney McCue said; the easement is for the 15th Tee on the golf course, not the 14th Tee. Attorney Eisner provided the Board with copies of a settlement agreement, which was put in place to secure rights for the golf course to use portions of this road. He said the golf course has easements for electric and water, which runs under portions of the road as well as easements to use the road for all golf course purposes. Attorney Eisner discussed the concerns with the portion of the golf course that are across Greenview Drive relative to the impact of the business as well as safety of the golf course patrons.
- d. Bob Bollinger discussed the ESMI soil and talked about the easements. Mr. Bollinger discussed his concerns regarding the residents of Greenview Drive and the golf course not keeping a united front.
- e. Attorney McCue said that he disagreed with Attorney Eisner and Mr. Leombruno regarding the easement. He stated the easement allows the golf course to go over the road, not the road to go over the golf course. Attorney McCue discussed the 50-foot right-of-way relative to driveways and mailboxes. He stated the amount of traffic on this road is not going to increase substantially as the construction is at its end. Attorney McCue said he understands that Mr. Leombruno wants to be able to continue running his business and does not see how the Town taking over the road would impact the business. Attorney Eisner said he disagrees with what Attorney McCue said relative to the “burdened

land”, he said that Mr. Leombruno, The Ledges Golf Links, Inc., owns that land and Mr. Crowley had the right-of-way. Mr. Leombruno said that he had met with the residents of Greenview Drive and discussed the results of the meetings. He said that he and Attorney Eisner have stated that The Ledges Golf Links, Inc. does not have a problem with the road going public. His issue is that The Ledges Golf Links, Inc., retains the rights of the settlement agreement between Crowley, Bouchard, Workman, Leombruno, and The Ledges Golf Links, Inc., and the easements to maintain the underground utilities and all the infrastructure of the golf course. Mr. Leombruno asked that the Board honor the easements and agreements that are in place.

- f. Marcia Campaniello asked the Board if the Town had any issues with honoring the easements and agreements that the golf course has in place. Chairman Bowles said that without a clear deed to the road the Town is probably not in a position at this time to accept the road. He said that research is needed to determine who exactly owns the road. Chairman Bowles went on to say that once Ms. Crowley provides the information of who owns the road, Town Counsel would need to be contacted for his recommendations. He said that he is not aware of the Town accepting roads with easement conditions and would have to get Town Counsel’s opinion on that also. Discussion ensued regarding road acceptance in the past. Chairman Bowles said this road is not a typical road. Mrs. Campaniello asked if the question of who owns the road is what would hold up the acceptance of the road. Chairman Bowles said it was a major concern. Mr. Leombruno asked if the issue with the 15th Tee were no longer an issue, would the Selectmen honor his easements and settlement agreement as they stand. Chairman Bowles said he could not answer that until the Board talks with Town Counsel. Mr. Leombruno said that the easements and settlement agreement are his major concern. Selectman Maxfield stated during Phase I on the road Mr. Crowley said he was building four or five homes and gave Mr. Leombruno the easements. He said he agreed with Chairman Bowles that he would like to get Town Counsel’s opinion. Attorney McCue stated that when the deed is drawn up for the Town’s acceptance it would have to include references to any easements, agreements, or legal encumbrances. Chairman Bowles said until it is determined who owns the road, if it is in the best interest of the Town, and if the Town even has the right to accept it because of the encroachments and easements, he will not make a decision. He went on to discuss the corner pin for Steve Roy’s property relative to the shoulder of the road. Attorney McCue stated that the corner pin for Mr. Roy’s property is on the edge of the right-of-way. The paved portion of the road is not actually in the middle on the corner. In order to make the corner drivable, the paved portion of the road does touch almost over to the side of the 50-feet. He said there is suppose to be a 5-foot shoulder on either side, but in this area, there is extra on the

other side. Chairman Bowles said that an easement would still need to be obtained from Mr. Roy to keep the ditch line cleaned up. He said these easements need to be obtained before the Town would consider accepting the road, it is not up to the Town to obtain them, it is up to the petitioner. Attorney McCue asked when the Board would have an answer as to if they are going to accept the road or not. Chairman Bowles said once the Board saw that all the issues that are being discussed tonight are addressed, but that the Board has ten days from tonight's meeting. Attorney McCue said that if the Board does not accept the road, and the petitioner is not happy with the decision, they have to go to the Zoning Board of Adjustment to appeal the Board's decision. The petitioner would have fifteen days prior to the ZBA meeting to file an appeal, there is a chance that they could not get in on the January agenda, and it may have to be at the February meeting. The residents on Greenview Drive need to have some direction as to how to proceed with the winter issues. Chairman Bowles said that it would probably be in the best interest of the petitioner to get the issues resolved. Attorney McCue said that before they change anything it would be helpful to know what Town Counsel finds before they make any changes. Selectman Ives stated he wanted to get all the facts prior to making any decision.

- g. Deb Kardaseski stated it was her opinion that if the Town were to accept the road with all of the easements in place and tried to negate the easements it would be considered a taking and does not feel it could happen. She stated she felt Mr. Leombruno should not worry about the easements. Ms. Kardaseski discussed power line easements and said that they are legal and binding agreements and she does not feel the golf course needs to worry about this type of issue.
- h. Discussion ensued regarding golf carts crossing a public road. Mr. Leombruno discussed his conversation with the State Highway Patrol regarding this issue.
- i. Maryann Adams discussed the issue of wording in her deed versus the wording in the deeds of other properties on Greenview Drive. She stated that she has concerns about Greenview Drive being a public road and possible future development. Ms. Adams asked if Voted Road could be brought up to a Town Road and combined with the upper part of Greenview Drive for those who want it to be a Town Road and leave the first part of Greenview Drive a private road. She discussed the concerns relative to wetlands issues. Marie Sherman said that the wetlands issue would be there no matter if the road were public or private. Mr. Geiger said that there is no drainage design and his concern is if you add salt to an area that has never had salt before there will need to be detention ponds and retention ponds put in. Selectman Maxfield stated Voted Road is a non-maintained Class VI Road subject to gates and bars. To open up the road would be the responsibility of the developer to bring the road up to Town Standards.

- j. Mrs. Campaniello read a letter into the record. See attached. Selectman Maxfield said that the Selectmen have reviewed the deeds of many of the properties and there is wording that goes back to the original agreement for road maintenance. Mrs. Campaniello stated there is no such wording in her deed and asked that it be noted for the record.
- k. Bob Landry said that he feels the consensus is that the residents on Greenview Drive want the road to go public and they do want the golf course to be able to operate with out any issues. He went on to ask if due to the issue of the Selectmen having to make a decision within ten days of this meeting, could the Selectmen table the meeting so the research can be done, then reconvene the meeting later. Chairman Bowles said that it could be done, but they would look in to the issue of needing to make a decision with in the ten days to see if that could be extended by the continuation of the meeting.
- l. Mrs. Campaniello asked if a list could be made of the outstanding issues that need to be addressed between now and next Tuesdays meeting so that all the issues can be addressed. Selectman Maxfield said the easements and the Town's liability to accept a road with honoring the easements and the golf carts traveling along the side of the road are the issues. He said that Chairman Bowles had discussed the issue of Mr. Roy's property lines. Selectman Ives said that he also wanted to know if the Town would be liable if a golf ball went through a vehicles windshield if the Town accepted the road as well as the issues with the golf carts traveling on or across the road. Chairman Bowles said the biggest issue is who owns the road at what point and the corner pin on Mr. Roy's property relative to maintaining the ditch line. He said these issues have to be resolved by the owners, not the Selectmen and until these issues have been worked out, the Town cannot consider accepting the road.
- m. Ken Lorden asked that Mr. Leombruno and Ms. Crowley come forward with the easements and agreements so that these issues can be addressed. Mr. Leombruno said that if Town Counsel advises the Board that the golf course can continue to operate and the easements and agreements will be honored, his attorney and Ms. Crowley's attorney could work together and get the issue of who owns the 100-feet of Greenview Drive resolved.
- n. Sandra Lyle asked about the liability issues relative to who is responsible while the road is private. The Board said that as a private road that would be a civil issue and the Town would not be involved. Mrs. Lyle asked what would happen if her house was on fire and these issues were not yet resolved. The Board said that with this being a private road the Town does not have the right to maintain it until it meets the criteria and is a Town Road. Chief Burr said that he would do everything possible to get the fire truck or ambulance to where it needed to be but there was no guarantee that they would be able to get

- through. He said that the fire trucks and ambulance has a higher clearance than regular vehicles and they would do everything they could. Chief Burr went on to say that there are three mobile home parks and other private roads in Town that police and fire respond to if there is an emergency and the Town does not maintain those roads.
- o. Mr. Merrill discussed the issue of maintenance bonds for the road. He said that on other roads in Town the developer had to maintain a maintenance bond on the road for five years from the time the Town accepted the road. Chairman Bowles discussed the bond history and said that there is still a bond in place for phase III of Greenview Drive. The Board will look into this also.
 - p. Mark Burke asked why the people on Greenview Drive were paying taxes if they were not getting the services of the Town. Chairman Bowles discussed the subdivision process and talked about the Planning Board regulations that are part of the subdivision approval to install sprinklers, cisterns, fire ponds, or dry hydrants to help protect the homeowners. He went on to say that the Town has always done what it can to look out for the safety of the Towns people and if there is an emergency, all that can be done, will be. Mr. Burke said it was his understanding that if the fire ponds were not in place the road would never be able to be accepted by the Town. Chairman Bowles said that was correct, part of the conditions for the subdivision approval was the fire ponds. He said bonds were put in place to be sure that those conditions were met. If they were not met, the Town would have had to access those bonds and contract out to get the fire ponds in place for the safety of the residents on Greenview Drive.
 - q. David Little stated that the original concept of the area was that it was going to be an expansion of the golf course, now it has turned into a residential development. Chairman Bowles discussed the progression of the subdivision through the Planning Board.
 - r. John White said that he had previous experience of driving through two golf courses that had a public road going through and he felt it could probably be done in Loudon.
 - s. Mrs. Sherman discussed the Planning Board approvals for this development. She stated that if the Planning Board gave their approval she did not understand why this road could not be accepted as a Town Road. Selectman Maxfield discussed Phase I. Mrs. Sherman discussed the progression of approvals and building permits. Mrs. Campaniello said that she does not understand why Phase I is an issue now when Phase II and III have already been approved. She said that the Planning Board should have considered any issues with Phase I when approving Phase II and III. Chairman Bowles again said that the Board needed to gather information, that they have not had a chance to meet with the Planning Board since this issue has come up to get the Planning Board's input and history on this subject. He said that the Board is not saying that the road is dangerous or that they are not

going to accept the road as a Town Road, they are saying that they need to resolve any issues and get Town Counsel's opinion before making any decisions. An audience member asked about a crosswalk and signage. The Board said that this would be addressed.

- t. Alan Cantor said when he purchased the property five years ago it was a private road and he purchased it thinking that it would remain a private road. He understands that the neighborhood has changed, however, he asked that the Board consider the fact that they purchased on a private road because that is where they wanted to be.
- u. Attorney McCue asked if the Town Engineer had any issues with the road. Chairman Bowles said that it did not appear that the engineer had any real issues; however, he is not sure what will happen with the drainage questions. It will be looked into.
- v. Ray Cummings said he felt the issue with the sharp corner should not be an issue as the Planning Board approved it and said that he did not feel the grades were too steep but he had heard that that might be an issue. Chairman Bowles said that there are many rumors and as far as the Board knows, Mr. Crowley built the road to the best of his ability.
- w. Selectman Maxfield moved to continue this hearing to Tuesday, December 19, 2006. Seconded by Selectman Ives. Mr. Leombruno asked if the Board would be able to advise the residents of Greenview Drive at that meeting, what Town Counsel has advised the Board to do. Chairman Bowles said as far as he knows the Board has ten days from today to give the Board's decision. He said that he would find out what the exact procedure is. Selectman Maxfield talked about the possibility of the ten days starting at next weeks meeting as it is being continued. Selectman Ives talked about emergency vehicles doing their best to get to an emergency. Chairman Bowles called for the vote. All in favor. Motion carried. Chairman Bowles stated there would be no further notice for the continuance of the public hearing.

VII. The Board met with David Little regarding an assessment issue for a mobile home on Clinton Street.

- a. Mr. Little discussed the mobile home site value of \$10,000.00 on the assessment card for Tax Map #068, Lot # 015. He asked how could there be site value if the person does not own the land. Mr. Cowan owns the land. Chairman Bowles said that the assessment is not for the land. It is based on the market value from sales that have occurred. Mr. Little said this taxing someone for something they do not own. The Board said that this issue has been brought before the Assessors and they have defended the assessment. They advised Mr. Little to speak with the assessors or file an abatement. Discussion ensued regarding lot rent in the mobile home parks. Mr. Little said that it is up to the Selectmen to look into this issue and to be sure, this is not double assessing. Selectman Maxfield said that he would contact Assessor Jeff Earles and get an answer to Mr. Little's question.

Selectman Maxfield moved to adjourn at 8:55 PM. Seconded by Selectman Ives. All in favor. Meeting adjourned.

THE LOUDON BOARD OF SELECTMEN

Dustin J. Bowles, Chairman

Roger A. Maxfield, Selectman

Steven R. Ives, Selectman