

Disclaimer. Please note, these Minutes have yet to be approved. Check with the department or Town Clerk for updated versions.

**BOARD OF SELECTMEN
REGULAR MEETING
October 21, 2015**

Present: Norman M. Needleman, First Selectman
Stacia R. Libby, Selectman
Bruce M. Glowac, Selectman

Norman Needleman called the meeting to order at 7:00 p.m.

Approval of Agenda:

Motion was made by Stacia Libby to approve the Agenda. Bruce Glowac seconded the motion. All in favor.

Approval of Minutes:

Motion was made by Stacia Libby to approve the October 7 Minutes. Bruce Glowac seconded the motion. All in favor.

Informational Items, Communications and Correspondence:

Eversource Transmission Maintenance

Mr. Needleman reported that Eversource Transmission Maintenance will be replacing two structures whose access is in the right-of-way of Ingham Hill Road.

CRRA/MIRA Letter

Mr. Needleman reported that after a long arbitration process between CRRA/MIRA and Metropolitan District (MDC), the decision has been reached in favor of CRRA/MIRA's defenses. MDC was seeking termination costs related to the expiration of a 23 year services agreement.

Public Announcements / Comment: None

OLD BUSINESS:

Capital Building Committee Report:

Bruce Glowac reported the projects are proceeding. They are continuing to work on the air conditioning at the elementary school. The new town garage building will be constructed in the spring of 2016.

Amended and Restated Ordinance Creating a Park and Recreation Commission

Norman reported this item has been tabled until the next Selectmen meeting.

Evans Lane Dispute – "Pending Litigation" for FOIA Purposes

Mr. Needleman read into the record the motion that was made at the October 7, 2015 Board of Selectmen Meeting.

Motion was made by Norman Needleman that Town Counsel be authorized to commence with a declaratory judgement action to determine whether all or any part of the westerly end of Evans Lane,

Disclaimer. Please note, these Minutes have yet to be approved. Check with the department or Town Clerk for updated versions.

located within the deeded property of Thomas Daniells, Trustee, is a public highway, subject to no action being commenced prior to October 22nd, 2015 if the parties provide to the Selectmen a written agreement setting forth a process for the resolution of the dispute with respect to Evans Lane. This agreement must provide for the manner in which that portion of the disputed Evans Lane will be plowed and maintained as a safe travel way to a point westerly of the PenkoffLidbeck dwelling house driveway. Bruce Glowac seconded the motion, it was unanimously approved. Motion carried.

Mr. Needleman stated that the motion was to allow time for the neighbors to come up with a resolution of the dispute and for a plowing and maintenance plan to be in place.

Attorney Thomas M. Daniells stated that as a result of the Motion made at the October 7th Board of Selectmen meeting, he reached out to Attorney John Bennett. He stated to the Selectmen that everyone needed more time to come to an agreement and proposed an extension of at least 30 days. Attorney Daniells stated that until a decision could be reached, his clients would continue to maintain the road by using professional snow plowers and landscapers. Attorney Daniells stated that he and his clients would be amenable to meet with the neighbors to discuss and come up with ways to make the road maintenance and improvements even better.

Attorney Daniells stated that he would like to make a proposal. In the minutes of the October 7th meeting, everyone wanted to see this dispute settled out of court and he believes he has a way to do that. He proposed that the current residents of 15 Evans Lane maintain the road until the dispute is settled. He also stated that if there is anything wrong with the way they are maintaining the road, they should be notified immediately so the issue can be addressed and corrected. The second thing they would like to propose is that this dispute goes to mediation with all three parties present, and to include the Eastons. He suggested mediation in front of an independent neutral mediator. The mediator may be a retired judge or an experienced attorney, etc. who can hear the case at a fraction of the cost and at a fraction of the time. This would allow a place for all legal arguments to be presented. Attorney Daniells would like the Selectmen to vacate the motion that was made at the October 7, 2015 Board of Selectmen meeting. They would prefer that the parties go into mediation over this dispute.

Attorney David Royston stated that the motion had two parts. The first part was for the parties to come up with an agreement setting forth a process for the resolution of the dispute with respect to Evans Lane and to submit it in writing to the Selectmen. The second part of the motion was to provide in writing a process of how that portion of the disputed Evans Lane will be plowed and maintained.

Attorney Daniells and Attorney Royston both stated that they have not heard from Attorney John Bennett.

Attorney Royston stated the Town has plowed to the end of Evans Lane in the past and the Town would like to continue what was done in the past. Attorney Royston also stated that the terms of the motion have not been satisfied.

Mr. Needleman opened up the Selectmen's Meeting to allow for Public Comment.

Ms. Kelly Simpson-Angelini thanked Norman for putting Evans Lane on the agenda. She presented a letter to the Town from CP Landscape, LLC that provided an extensive maintenance services

Disclaimer. Please note, these Minutes have yet to be approved. Check with the department or Town Clerk for updated versions.

proposal to maintain the westerly portion of Evans Lane. Ms. Simpson-Angelini asked the Selectmen, what is the benefit to the Town to pursue this dispute?

Attorney Royston stated that the original complaint to the Town was that the road was being torn up and the installation of the new stone and loose gravel was ending up in the neighbor's driveways, which was a safety concern.

Ms. Simpson-Angelini stated they plow their driveway down to the barn, not down to the street. They have hired contractors to pick up the stones and to sweep them off the street. They have plans to chip seal, but they have suspended that project until this dispute is resolved.

Ms. Simpson-Angelini's contractor stated that he did sweep and then wheelbarrow the stone back to the driveway, but he stated the stone he swept up is not from the Simpson-Angelini's driveway.

There were comments and questions from the public. Some residents feel this is a neighbor dispute, not a Town issue. Some were inquiring whether the Town must or should take a position on the Evans Lane dispute or whether the Town should abandon all claims to the road. There was concern from the public of the costs and expense associated with fighting a boundary line issue.

Mr. Needleman closed the public comment.

Mr. Needleman stated the Evan Lane Dispute is a complex matter. Roads can be considered roads in a number of ways. Although a road may be deeded to a property, it is still a road. A road can be a road based on it being declared a road, or a road by dedication.

Mr. Needleman stated that after listening to everyone tonight, there appears to be an abundance of misinformation that has been distributed. He has tried to work out a resolution to the dispute. The last thing he wants is for this to end up in court in order to get an opinion.

Mr. Needleman stated that the Town had plowed Evans Lane back since 1972. Mr. Needleman also stated that because he held back on the Town plowing the westerly end of Evans Lane last winter, he received numerous emails and photographs of the poor road conditions because there were safety concerns from the neighbors.

Mr. Needleman stated the issue is that one party believes it is private property and the other party believes it is a Town road. The motion that came out of the last meeting was to have the parties come up with a resolution. Mr. Needleman stated that the Selectmen are here to protect the interests of everyone in this town and to make the decisions in order to do what is right for the Town.

Mr. Needleman reported that Town records from the 1930's, 1940s, and 1950s show this road was maintained by Public Works all the way to the end. Norman stated that at this point we are at a dead end and it is a dispute and the Selectmen, although they have tried, cannot remediate this. He stated that the paved portion of Evan's Lane was ripped up and stones were put down.

Bruce Glowac said he agrees with what Mr. Needleman is saying and there is a lot of misinformation. The Town does not want to get involved in a neighbor dispute but we were forced into this issue. Mr. Glowac also stated that he knows that the road was plowed in the past by Public Works. He stated that the Town attorney has researched it and it is a road by dedication. Maps date back to the

Disclaimer. Please note, these Minutes have yet to be approved. Check with the department or Town Clerk for updated versions.

1800's. He felt the most logical way to remedy the dispute is to propose a declaratory judgement. Mr. Glowac stated that he didn't want to be in this position, but the only win for the Town is to come up with a resolution and the Selectmen did propose that the parties come up with a resolution.

Attorney Royston stated that this could be resolved in a formal mediation. He would like to discuss a proposal with Attorney Daniells and Attorney Bennett.

Motion was made by Stacia Libby to table this until after public comment session. Bruce Glowac seconded the motion. All in favor.

NEW BUSINESS:

Resolution – State of Connecticut Division of Emergency Management and Homeland Security

Motion was made by Stacia Libby to approve the Authorization Resolution (attached). Bruce Glowac seconded the motion, it was unanimously approved. Motion carried.

Code of Ethics Regulations

Motion was made by Stacia Libby to approve the Essex Ethics Ordinance Regulations. Bruce Glowac seconded the motion, it was unanimously approved. Motion carried.

Southern Connecticut Gas Company (SCG) Pipeline Proposal

There was discussion on the natural gas line that may have been extended through to Dump Road which houses the Public Works garage and the Transfer Station. The gas company was asked to do an analysis and the proposal was presented. Unfortunately the exorbitant cost is due to the costs of going under the railroad crossing. The cost was \$304,271. Eric Roppe and John Maziarz, from SCG said the cost was determined from a formula calculated over time in order to achieve a rate of return.

Appointments and Resignations Board and Commissions

The First Selectman appointed Peter Decker to the Retirement Board to fulfill an unexpired term through November, 2015.

Traffic Authority

Motion was made by Bruce Glowac to enter Traffic Authority. Stacia Libby seconded the motion, it was unanimously approved. Motion carried.

Blind Intersection Caution Sign Request

A request has been made for a "Blind Intersection" sign to be installed south of Budney Hill, warning oncoming traffic of a blind intersection.

Motion was made by Bruce to recommend to the State of Connecticut that a "Blind Intersection Sign" be installed south of Budney Hill. Stacia Libby seconded the motion, it was unanimously approved. Motion carried.

Motion was made by Bruce Glowac to exit Traffic Authority. Stacia Libby seconded the motion, it was unanimously approved. Motion carried.

Disclaimer. Please note, these Minutes have yet to be approved. Check with the department or Town Clerk for updated versions.

Evans Lane Dispute – “Pending Litigation” for FOIA Purposes

Ms. Simpson-Angelini stated that she recently attended a meeting in Deep River where they video tape their meetings and suggested that Essex do the same.

Ms. Mathews expressed her view that she found it odd that for years there has been a dispute about the road and she feels that due to the fact that she is a lesbian and a woman that the Town is now considering litigation.

Each member of the Board of Selectmen expressed their view that her sexual orientation has nothing to do with the road dispute. Selectman Stacia Libby stated that she looks at Marissa and Kelly as a married couple, nothing else. The Selectmen felt offended that this was even mentioned.

Attorney Royston stated the controversy over the road had commenced prior to their acquisition of the property in 2008 from George Michel.

Ms. Mathews asked, if it was always a dispute, why the Town is fighting them now and why not with the prior owners. She wants to understand why she is being treated differently. She also wanted to know why a Certificate of Occupancy was given.

Mr. Glowac said that no one is being singled out and no one is being persecuted. He stated there were no arguments about the road in the past. But now there are and they need to be addressed and resolved. Mr. Glowac stated that nobody is taking sides. The question is whether it a Town road.

Mr. Needleman stated that the issue with the road should have been resolved years ago, but it wasn't and now the Town needs clarity on this. There is a legitimate dispute here. Not every record is perfect in this Town. Issues arise when someone complains, and then the Town is forced to look at them. One of the options in the Evans Lane situation is to just discontinue the road.

Mr. Glowac stated we are treating this as a Town road because that is how it has been treated in the past. He stated that yes; this dispute should have been addressed and taken care of when Mr. George Michel put the pots in the road, but unfortunately, it wasn't.

Mr. Needleman stated that after weighing the facts, as he sees them, and talking to Town employees, it is his opinion, that some part of the westerly end of Evan Lane is a Town road. He believes it is a road by dedication. Attorney Daniells disagrees.

Mr. Needleman proposed plowing past the pillars and Ms. Matthews said that would never be allowed to happen. Mr. Needleman stated that the Town should, for health and safety reasons, have the ability to plow the road.

Mr. Glowac stated that the Selectmen want a permanent resolution to this issue and to do so would require a good mediator

There was discussion on the amount of time needed to find a good mediator in order to do the actual mediation. It was determined to be anywhere from three to six months. This would allow all legal and factual arguments to be on the table. The hourly rate for the mediator would be split three ways.

Disclaimer. Please note, these Minutes have yet to be approved. Check with the department or Town Clerk for updated versions.

One of the contractors, who worked on 15 Evans Lane, stated that all permits were pulled and there were no bonding requirements, which are necessary for any of the projects over roads.

Attorney Royston discussed the issue of permits for the construction at 15 Evans Lane. Attorney Royston stated that any building permit requires two things. The first item is that the Zoning Enforcement Officer must sign off that what has been done is lawful and there are no zoning issues. The second is the Health Permit, which is related to the septic system, must be signed by the Sanitarian. There is no dispute of the property line, but the dispute is whether a Town Road runs through the property.

Ms. Mathews stated that the Town never told them that there was a Town road running through their property and the septic system has been installed under the road.

Attorney Royston said that he wanted to indicate that the permits were all issued properly.

Attorney Royston said there is a dispute, and it's been a historic dispute. Some people have strong positions on whether the westerly end of Evans Lane is a public road or a private road.

Attorney Royston said his charge was to find a way to resolve the dispute without taking it to court. In June of 2014 there were draft easements provided for a turnaround, driveway access, etc., so there was an attempt to resolve this dispute. At this point something needs to be done to satisfy the parties and the Town.

Attorney Royston said the Board of Selectmen has tried to resolve the dispute. Nobody wants to be sued, and the Town does not want to be sued. The Town would open themselves up to liability if they do nothing. Attorney Royston said he cannot, at this point, make a recommendation to do anything other than do what the original motion from the October 7th Board of Selectmen meeting.

Attorney Royston stated that everyone would like an end and a resolution to this dispute, whether by court, mediation, binding arbitration, or a meeting.

Mr. Needleman stated that his offer to have the westerly end of Evans Lane plowed until this dispute is resolved has been rejected. Mr. Needleman also stated there is no reason why this cannot be resolved. Everyone is going to have to give up something and everyone must compromise. The only reason we are here is because everyone is intransigent.

Mr. Glowac agreed with Mr. Needleman and said that nothing is going to get resolved in this room. He feels the direction to take is to go to the next step to resolve this, which would be mediation.

Motion was made by Norman Needleman to postpone the date for Town Counsel to commence a Declaratory Judgment action in the Motion made on October 7, 2015 until after the next Board of Selectmen meeting scheduled for November 4th, 2015 at which time further instructions will be given. Bruce Glowac seconded the motion, it was unanimously approved. Motion carried.

Ms. Libby is in favor of allowing the plowing to be handled privately if all the neighbors' concerns were met.

Disclaimer. Please note, these Minutes have yet to be approved. Check with the department or Town Clerk for updated versions.

Attorney Royston stated the drafted Declaratory Judgement Action names Stasia and Glenn PenkoffLidbeck, the Eastons, the Trustee, and the residents of 15 Evans Lane. All parties will be provided notice. The action will be asking for the court to determine if all or any part of the westerly end of Evans Lane is a Town owned road.

Attorney Royston stated the Town can do one of four things. It can do nothing, do a Declaratory Judgement Action, Mediation, or hold another meeting to come up with a compromise.

Mr. Needleman suggested he call a meeting in his office next week with all interested parties in order to come up with a resolution to avoid this dispute going to court. There was further discussion and a decision was made to set up a meeting with all three attorneys and their clients during the week of October 26th in order to come up with a resolution.

Public Comment / Announcements: None

SELECTMEN GENERAL DISCUSSION:

There was discussion that at the next Board of Selectmen meeting, appointments will need to be made for all Boards and Commissions whose terms expire.

Motion was made by Stacia Libby to adjourn the meeting at 10:24 p.m. Norman Needleman seconded the motion, it was unanimously approved. Motion carried.

Respectfully submitted,
Maria P. Lucarelli

AUTHORIZING RESOLUTION OF THE TOWN OF ESSEX

CERTIFICATION:

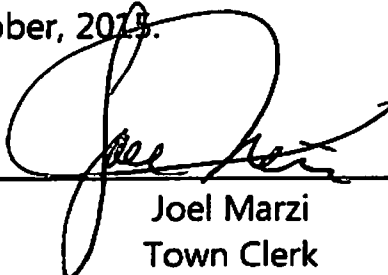
I, Joel Marzi, the Town Clerk of the Town of Essex, do hereby certify that the following is a true and correct copy of a resolution adopted by the Town of Essex at its duly called and held meetings on October 21, 2015, at which a quorum was present and acting throughout, and that the resolution has not been modified, rescinded, or revoked and is at present in full force and effect:

RESOLVED, that the Town of Essex may enter into with and deliver to the State of Connecticut Division of Emergency Management and Homeland Security, Department of Emergency Services and Public Protection any and all documents which it deems to be necessary or appropriate; and

FURTHER RESOLVED, that Norman M. Needleman, as First Selectman of the Town of Essex, is authorized and directed to execute and deliver any and all documents on behalf of the Town of Essex and to do and perform all acts and things which he deems necessary or appropriate to carry out the terms of such documents, including, but not limited to, executing and delivering all agreements and documents contemplated by such documents.

The undersigned further certifies that Norman M. Needleman now holds the office of First Selectman and that he has held that office since November 15, 2011.

IN WITNESS WHEREOF: The undersigned has executed this certificate this 22nd day of October, 2015.



Joel Marzi
Town Clerk