

**TOWN OF WINCHENDON
BOARD OF SELECTMEN EXECUTIVE SESSION MINUTES
MONDAY, JUNE 1, 2020**

**-- Conducted by Remote Meeting --
Zoom Meeting ID:**

Present:

Audrey LaBrie, Chairwoman
Barbara Anderson, Vice-Chair
Amy Salter
Michael Barbaro
Rick Ward

Keith R. Hickey, Town Manager
Linda Daigle, Executive Assistant

List of Documents Presented at Meeting:

- Email Correspondence between Town Manager, Keith Hickey and Town Counsel Regarding the Challenge of Unaccepted Roads (April-May 2020) (attached)
 - McGregor & Legere Law Office letter dated April 21, 2020 Demanding the Town Resume Repair and Maintenance of the Entirety of Mellen Road
 - List of Unaccepted Roads Currently Plowed but not Maintained
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EXECUTIVE SESSION: Exemption No. 6 – To consider the purchase, exchange, lease or value of real estate, if the Chair so declares.

LaBrie called Executive Session to order at 8:16PM. She informed the Board she asked to have this on the agenda this evening to address a response from our Attorney in regards to the Mellen Road issue and the letter we received on April 21, 2020.

Barbaro asked the Town Manager how much the Town has spent on legal fees in this matter. Hickey replied there are fees back from 2007; since 2019 until now about \$1,500 has been spent.

Barbaro said he's had some discussion and throwing out some ideas. He asked the DPW Director what he thought it would cost to dig up the road, restore it to a dirt road. Six months ago the figure was about \$20,000 to grate the road to a dirt road. His fear is this matter is going to be an ongoing issue and will end up in court. He did mention to Mellen Road residents the estimated cost and it was not well received. He suggested to them that it could be handled by entering a betterment assessment. He would like to end the situation and propose to Town Meeting a \$20,000 expenditure to dig the road up, restore it to a dirt road and leave it at that. The road will be up to grade, if we choose to accept the road as a Town road later, we could do that. We would be just responsible for grading it. He asked the DPW Director for an estimate to restore the road and was told it would cost over \$300,000 and he would not want to spend that much money on an unaccepted road. The dirt road may not make everyone happy, but it solves the problem for the foreseeable future.

LaBrie asked if we restore the road to a dirt road, will it meet all the requirements to then be accepted at Town Meeting wondering what additional work may be needed. The Town Manager responded it was his understanding that there are minimum specifications for the construction of dirt roads. They are fairly old because we haven't brought a dirt road to Town Meeting for quite some time; but there are minimum standards that could be met for

Town Meeting consideration. Couple things to clarify and not advocating one way or another, his understanding in reading the letter from the attorney representing the abutters, the first layer of asphalt was placed on the roadway way before the houses were built. A minor misunderstanding he feels because the road was never dirt, it was built with a first layer of asphalt and has caved and is now a combination of dirt and old asphalt.

Hickey reminded the Board of the broader picture that the Town has seventeen unaccepted roads that are plowed right now; half are private, half public. Property owners of thirteen or fourteen of them could ask you to do the same thing. He suggested whatever they do, the other property owners may come to them to ask for the same thing. He's not suggesting a good or bad thing, but pointing out this is not just a Mellen Road issue, but an unaccepted road issue.

LaBrie thought the same, setting the precedence. She asked Barbaro when he talked with the residents, did he mention to them bringing the road up to a dirt road standard or a fully paved standard. Barbaro replied dirt road standard and fears that this will drag on and end up in court and is concerned of the time and effort that is going into it. A lot of energy is being expended on it and wants to show the Town is putting in an effort to resolve this. He is getting a sour feeling from them but in the long run, there was an accident with a Town vehicle up there and according to our lawyers we don't have liability to maintain the road. He cautioned thought the courts don't look at it that way and is looking for a reasonable solution for a long term problem with a minimal cost to the Town. It's not the best solution, but a way to minimize long term damage and somewhat satisfy the residents that they have been heard.

Ward commented he drove the entire road today, not a fun experience and understands that school buses must go up there. He's gone over the documents and sort of agrees with Barbaro. We have a solid case but the 1989 vote is questionable; the 1914 vote is solid. We've done work on this place and he has a bad feeling about winning this. If we can get out of this for \$20,000 - \$30,000, he feels we should but is also concerned the Town will have to keep doing it forever. We have other dirt roads like N. Central that we maintain.

Salter asked if we had insurance coverage if we were to get sued and lost. Hickey replied that we have insurance, he believed, to protect them and cover the legal expenses in defending the case but if the court decided the Town was responsible for the maintenance of the road, there wouldn't be any insurance to make any upgrades the court's decision deemed appropriate. She was concerned where the Town would get \$20,000 with the current state of the Town's and the State's finances at this time. Barbaro replied everything would be based on finances and if funds become available for this to be a viable solution. Salter asked if the homeowners wanted the dirt road or a paved road. Barbaro replied they are looking to have this fixed one way or the other. If this is the option we give them and they don't like it, we've at least made our best option to fix this and have tried to help.

LaBrie noted the Board can only decide if they want to put something forward to Town Meeting and ultimately the voters will have to decide.

Anderson asked if the Town puts any work and money into the unaccepted road, does this then become our problem. Hickey replied, referring to Town Counsel's email, the Attorney recommends if the Board wanted to change it to a dirt road, "the Selectmen also require the residents to provide a layout plan of the boundaries of the roadway sufficient for the Town's use, and require the residents to waive damages for the Town's acquisition of an easement in the layout."

Hickey believes this would alleviate the Town's liability if something happened to someone's individual property when the work was being completed. LaBrie asked if the waiver would be transferrable to the new property owner if it sold. Hickey believed the waiver was just for the repairs/upgrades of the road from its current position through the upgrade and if an approved road, the Town would then maintain it as we would any other Town road.

Salter asked what if making it a dirt road makes it worse. It's a horrible road, and a reason why it is. It's pretty wet down there. Barbaro understands and is looking for an inexpensive way to solve the problem and grading it once a year might be a long time solution.

Hickey commented he agreed with Ms. Salter a bit and concerned the number provided to Barbaro might be light and before the Board makes any type of commitment, he would like to have the Attorney look at it with possible other options and spend more time getting a solid number that they could feel comfortable with consolidating that road to a dirt road. He's leery stating \$20,000 doesn't buy much. He didn't want to go to residents without having the right information. Barbaro agreed we have to have a hard number first.

Mr. Hickey said he would work with the DPW Director and get solid numbers and reach out to Town Counsel who will work on a reply responding to the Attorney representing the Mellen Road residents acknowledging receipt of the letter and the need until July or August to be able to respond more thoroughly to their request.

ADJOURNMENT:

Barbaro moved to adjourn from Executive Session and also adjourn from Public Session this evening; Anderson seconded. By a roll call vote of all aye, Executive Session adjourned at 8:44PM.

Respectfully submitted,



Linda Daigle
Executive Assistant