

**TOWN OF WINCHENDON
BOARD OF SELECTMEN
EXECUTIVE SESSION MINUTES
MONDAY, JULY 13, 2020**

-- Conducted by Remote Zoom Meeting --

Present:

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

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

List of Documents Presented at Meeting:

- Emails between Town Counsel and Town Manager re: "Challenge of Unaccepted Roads" (attached)
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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. -
Subject: Mellen Rd.

Chairman Barbaro called Executive Session to order at 8:42 p.m.

Town Manager Keith Hickey informed the Board he has some pros and cons of the processes of presenting a warrant article for some kind of repair for Mellen Road supportive of the Board or suggestive to Mellen Road residents to submit themselves to Town voters. Nothing has to be decided this evening. He could notify the Mellen Road residents Attorney if the Board makes a decision this evening of how the Board wants to proceed. Those are the two options. It's as simple as which party will submit a warrant article within the time frame established before the warrant closes.

An upside to the Board crafting an article, Hickey explained, is that you could determine what the scope will be and what the amount you are willing to expend. If voters are to submit a warrant article, you would lose the ability to control what is included in the article. He advised that if they present something other property owners with similar roads might be looking to do the same thing. He is looking to get a sense of what the Board wants and get a sense to notify the Mellen Road property owner's attorney on how you want to proceed.

Anderson expressed her concern that the information they have received on this seems to have evolved and thought the Mellen Road residents were told they couldn't put a warrant article on the warrant because it had to do with accepting Town roads. Hickey explained the process that typically occurs; the metes and bounds of the road are mapped and identified so the Town knows what it is accepting when the warrant article goes before Town Meetings. In this case, no metes and bounds have been established. What Legal Counsel has said, is at some point metes and bounds have to be identified so the Town knows what property they have of taking ownership of and what area the Town has the authority to work in. It is his understanding, that at Town Meeting you can set a deadline where the metes and bounds have to be established by a certain date and if not met, it would be null and void. Typically in the past, the Town requires a developer to bring forward to Town Meeting a road that is ready to be accepted. In this particular case, Mellen Rd. is not ready to be accepted because we have no metes and bounds and no legal description. There is really not a basis to bring a warrant article to Town Meeting, because you'll be asking voters to accept property that at this point hasn't been identified.

Hickey continued, what has been discussed in the past, was that Mellen Road property owners are to provide metes and bounds to the Town and we could craft an article knowing which property we own going forward to determine if voters are willing to spend public money on a private road to bring that road up to some type of Town standard, whether it be a dirt road or paved. There has been some discussion for a while now and has not changed much. In a normal situation, a road without metes and bounds would not be supported on a Town Meeting warrant by the Board of Selectmen, and would not be put on the warrant without a legal description and metes and bounds.

LaBrie understands the need for a legal description knowing where the boundary is if it were to be accepted; it also helps them to determine the value of the property whether the Town owning the land, taking care of the road, accepting the road is worth the price of getting it up to that standard. She was first supported of some article with some dollar amount towards the work and the rest would be up to the property owners on the road. She understands everyone else living on unaccepted roads will be right in line. She hopes the other unaccepted roads in Town that the history would not be as convoluted as this one with votes from 1912 and contractors not doing what they were supposed to do. She understands the need for metes and bounds and is now kind of thinking if the Board would consider, if the article was presented to put on the warrant upon the establishment of the metes and bounds for the acceptance of this road, to spend the money to bring this road up to the specified criteria to make it accepted, and put an article on the warrant.

Barbaro would like to see some sort of compromise. He would much prefer to work out where we work with them to dig the road up and turn it to a dirt road and have them do the metes and bounds for a follow-up meeting in the spring seeking acceptance as a dirt road.

Hickey offered another option for the Board to think about that other communities are doing which is some sort of betterment assessment, where the Town would front the cost of road repairs and a lien is placed on all of the properties identified in the scope of the project area. They would then have a period of time to pay the amount back and would be billed on an annual basis 1/10th of the cost of repairs to the road. That would allow the project to move forward and not be as daunting to property owners to come up with a sum of money for metes and bounds or have it paved. It's his impression the Town was trying to do the right thing with the developer at the time and needed infrastructure before building houses, but couldn't until they got house sales and someone from the Town at the time talked about allowing the developer to deposit \$5,000 every time a lot was sold. That would provide money to allow paving of the road to happen during the development of that section of the subdivision when enough funds to pave that road had accumulated. It would be nice to come to some type of solution that everyone could agree on and be satisfied with and reduce the risk of going to court. Does it make sense to sit down with representatives of the property owners to negotiate something or should the Board bring the road to Town standards and once you do, bring before Town Meeting for acceptance. It is a policy decision of the Board if the Town is in good standing or worthwhile to bring forth an article of your own. Hickey wished this was clear cut, but it's not with a long history.

Barbaro said he had mentioned a betterment option to the property owners after the last Town Meeting and it wasn't well received. He asked the Town Manager if the state could help with the state being property owners on the road. Hickey replied he hasn't researched this yet and is not sure of the direction. He did note the residents have asked about the conservation property across the street that is owned by the state. He doesn't have an answer and can reach out to Town Counsel. If we decide to move forward, Barbaro said, we will have to find out as they own half of the road.

Ward asked about the warrant for Town Meeting in 2009 if this was brought before Town Meeting to be accepted. Hickey's recollection was there was an article to bring the road forward but it was passed over by voters because there was a property owner on an abutting street who was challenging the need for this work as it was going to impact the number of cars driving on the road. He believes it was passed over by pressure from neighbors of an abutting street. Ward asked if the metes and bounds had been done in 2009 for that Town Meeting. Hickey wasn't sure. Ward expressed his frustration on this situation noting if the Town spent \$36,000 to crush the road and make it a dirt road, they will not be happy with that. They want a complete road. Hickey commented on spending \$36,000 in late fall or the spring, the Town will be facing more repairs and will the

Town be responsible to repair and who will pay for the metes and bounds. Barbaro replied, not sure, no matter how we resolve this, they are not going to be happy. The Town isn't going to want to spend \$200,000 to get a road accepted. He's looking for other thoughts from Board members.

Salter commented how hard it is to get a money article through Town Meeting when it affects a small amount of people. Barbaro agreed but thought the Board could control the narrative and make the effort to do something. Whether it goes through or not is beyond the Board's control. They don't have to agree to the petition; they have the option of recommending or not recommending.

Barbara noted she doesn't feel comfortable talking about this anymore in Executive Session because the more they do, the louder the opposition gets.

Hickey advised they have to let the residents of Mellen Rd. know what direction the Board will go so they can decide how they will react to it. If we do a Town Meeting, it will happen rather quickly. In fairness, you want to give the residents of Mellen Road time to get an article on the warrant. If you give them only three or four weeks to do something, it might be construed as not being very cooperative with the process. Salter thinks we should come up with a warrant article, make it minimal and if they don't like it, they can come up with their own as well. She would like to see their road fixed, just doesn't know where the money will come from.

Barbaro asked if it was fair to say this evening that the Board would respond to their attorney informing him they would draw up a warrant article for the next Town Meeting.

Hickey commented he was wondering what the Board is looking for, get a sense, what would be included in a warrant article for as little as possible. Barbaro suggested spending \$30,000 to reclaim, other costs are \$40,000ish for metes and bounds and another \$5,000 to \$10,000 for legal fees. He said \$186,000 provides a gravel road to allow the Town to accept it and bring to Town Meeting and maintain that road going forward in that condition.

Salter asked DPW Director Al Gallant what the Town would need to do to maintain the road. Mr. Gallant replied that ten times a year he would need to send a grader to grade the road. This takes a whole day to grade the road. They would also need to add material every other year and if it gets dusty, they will have to go out with water or put calcium down to keep dust down. He won't be able to take care of it efficiently with the employees he currently has.

LaBrie commented there is culpability on both sides. It's a drop in the bucket to say \$10,000 - \$15,000 asking the Town to vote to appropriate \$10,000 towards Mellen Road and limit it there. It would be up to the property owners to do with the small portion the Town gives them. Hickey is not sure what \$10,000 can get them. He feels it's at least \$36,000 that would be needed to reclaim the road before Public Works can do anything with that road. This would get it claimed but not accepted.

Barbaro proposed the Town reclaim the road turning it into a dirt road expending \$36,000 and they would need to spend \$40,000 to do the balance of the road and put it on a betterment. If Town Meeting approves it, they would meet us half way and we have made a legitimate effort to do something.

Ward questioned the Town spending \$40,000 would that help their case to show that we believe it's not a private way and spending more money on it. They are using what we did in the past against us now.

Hickey asked if the Board so wanted, he could reach out to Town Counsel tomorrow informing them the Board is willing to spend up to \$36,000 to reclaim the section of the road contingent upon the property owner's agreeing to a betterment assessment between \$45,000 and \$50,000 as long as the offer we make would not negatively impact the Town's current position if we were to go to court, would that meet the intent of the Board. LaBrie liked the point and wondered if it would prejudice them in a negative aspect with a future judge or jury and likes getting input from Town Counsel. She asked if the betterment would be approved at Town Meeting to

which Hickey replied, “yes.” LaBrie would like to make it contingent on any moneys the Town spends, it would be with the approval of a betterment assessment. Salter felt that the Board needed to do something.

Ward commented he is leaning towards to what the Town Manager and Ms. LaBrie have come up with suggesting \$36,000 and the Mellen Road property owners come up with \$45,000 to \$50,000. He feels firm that this is private, no doubt about it, and doesn’t want this article to mean in any way that this is not a private road.

Anderson commented they had to do something but doesn’t like any of the options at this point.

Barbaro asked if it was the consensus for the Town Manager to get a letter off to Town Counsel to draft a warrant article to bring the road to a dirt road and the property owners would have to fund a betterment for the metes and bounds requirement to put before Town Meeting to have the road accepted.

LaBrie asked if money would be allocated through the betterment to grade the road to get it to be acceptable. Mr. Gallant responded as a dirt road, it will not receive money from the State from Chapter 90 revenue. It would cost close to \$200,000 to pave it. The amount we are talking about is to get it to a gravel road only.

Gallant suggested possibly draft a document that they sign that says it’s their road but the Town will patch it with hot top to keep it maintained. We could do that for \$10,000 a year; they would maintain ownership of the road. It would be better than a dirt road. Hickey added it would need to be an annual warrant article for the Town to approve the \$10,000 annually.

Barbaro asked for closing thoughts.

LaBrie asked if the voters agree to \$50,000 and the homeowners’ betterments for the other \$150,000 to bring the road up to standards, paved, and accepted at Town Meeting, what the cost would be for each household. Hickey replied the betterment would be based on frontage on the road. He believes the state land would have a lien placed on it for whatever the betterment would be and it would only be paid if that land was sold. Probably wouldn’t see that money back, he said, but he would double check. He offered to run some numbers based on what they thought the estimate of construction and repairs would be and see what the numbers would be that would vary on the different lots. LaBrie said she would be comfortable with the Town doing “x” and the property owners doing “y”, with them agreeing to a betterment. Hickey said it would cost about \$235,000 to bring the road to a standard road by going in to reclaim it, establish metes and bounds and the legal work that needs to be done to have it accepted by the voters.

Ward stated he has no problem with this being on the warrant but will not stand up and defend it at Town Meeting.

It was noted that Salter lost her connection to the Zoom meeting. It was 9:36 p.m.

Barbaro asked if the Town Manager could reach out to the State for potential funds and if the Planning Board had any meetings regarding the road’s metes and bounds for that Town Meeting. Hickey replied they did as much digging as they could, but would check again.

LaBrie questioned if a motion is the next step or reaching out to the lawyers. Hickey replied that unfortunately, the residents of Mellen Road have obtained legal counsel. At this time, it is appropriate for our legal counsel to contact their counsel. The Board was concerned if they make any type of offer, would it potentially impact their position if they could come to some kind of agreement. Hickey replied he would reach out to Town Counsel.

LaBrie moved the Board authorize the Town Manager to reach out to legal Counsel, confirm that any monetary support provided by the Board of Selectmen will not prejudice us or go against us in any future actions and if the answer to that is “it will not,” authorize our Attorney to pass along that the Board is willing to put an article on Town Meeting warrant asking the Town to spend \$50,000 with the balance of

any money up to \$200,000 or higher to bring Mellen Road up to Chapter 90 standards to the betterment process for those residents of Mellen Road; Ward seconded.

LaBrie wanted to be clear in her motion that the Selectmen will not do this if the Mellen Road residents are not interested in doing this and seeing that they are receptive to it. If residents of Mellen Road are willing to pay the balance of the project after the \$50,000 contribution by accepting a lien placed on their property as a betterment assessment to pay the balance of the project, the Board would be supportive of spending the \$50,000. Without approval of the betterment, the money won't be approved by Town. Hickey added it would all be contingent with a betterment assessment being approved by residents of Mellen Road and the voters of the Town of Winchendon.

Roll call vote: LaBrie aye, Ward, aye.

Prior to voting, Anderson asked for clarification about sending a letter to Town Counsel. Hickey replied that he would have a conversation with Town Counsel, unless the Board requires otherwise, and address the offer the Board is willing to extend to Mellen Road residents through our Attorney and see if they are willing to accept that. His communication will be with Town Counsel and our Town Counsel would reach out to their Counsel.

Anderson then voted aye, Barbaro aye. The motion carried by a vote of 4-0.

Ward moved to adjourn from Executive Session; LaBrie seconded. With roll call vote of all aye, the meeting adjourned at 9:42 p.m.

Respectfully Submitted,



Linda Daigle
Executive Assistant