

MINUTES OF THE BOARD OF SELECTMEN

June 11, 2020

Recorded from Town Hall, 139 Main Street, Rowley, MA
2:00 p.m.

MEMBERS PRESENT: Chairman Cliff Pierce; Vice Chairman Joseph Perry; Clerk Robert Snow; David Petersen; Deana M.P. Ziev (Town Administrator Deborah Eagan, Assistant Town Administrator Amy Lydon)

CALL MEETING TO ORDER

Chairman Pierce called the meeting to order at 2:02 p.m. He read the following:

Consistent with the Governor's orders suspending certain provisions of the Open Meeting Law and banning gatherings of more than 10 people, this meeting will be conducted by remote participation to the greatest extent possible. The public may not physically attend this meeting, but every effort will be made to allow the public to view and listen to the meeting in real time. Persons who wish to do so are invited to watch the meeting on Rowley Community Media TV / listen live on the RCM page on the Town's website at www.townofrowley.net or join the meeting from your computer, tablet or smartphone by using the link: <https://global.gotomeeting.com/join/299455869> can also dial in using your phone by calling [+1 \(646\) 749-3122](tel:+16467493122) and using access code 299-455-869. In the event that live transmission proves infeasible, an audio or video recording, transcript or other comprehensive record of the meeting will be made available on the Town's website as soon as possible.

2:00 p.m. STREET LAYOUT HEARING - Cindy Lane and Belle Circle

Chairman Pierce read the Notice for the Street Layout Hearing.

Bob Snow made a motion to open the Street Layout Hearing, Joe Perry second, all in favor – aye - roll call vote: Bob Snow – aye; Cliff Pierce – aye; Dave Petersen – aye; Deana Ziev – aye; Joe Perry – aye.

Hearing opened at 2:04 p.m.

Chairman Pierce read the following:

This hearing is being held in accordance with the process for public way acceptance as prescribed under G.L. c.82 §§ 22-23.

The residents living on Cindy Lane and Belle Circle have received written notice of the Town's intent to lay out these ways. The notice and layout plans have been on file in the Town Clerk's Office and on the Town's website. The Board has before them the following:

- *copy of the layout plan for Cindy Lane*
- *a copy of the layout plan for Belle Circle*
- *An Order of Laying Out for Cindy Lane and Belle Circle, which includes Exhibit A – Legal Description of Cindy Lane and Exhibit B Legal Description of Belle Circle*

The Board needs to review the plans and the legal description. Town Counsel Tom Mullen will be in attendance at this meeting and can describe the process to the Board.

Tom Mullen said he notified the Board when he was first appointed as Town Counsel that he previously represented the Abuzzara Family Trust during the development of these ways. He said he has filed a disclosure for the conflict of interest with the Board of Selectmen. He said he no longer has a financial interest in this matter, it has been years since he represented Abuzzara and he sees no reason that he can't advise the Selectmen or Town Meeting on this matter if needed.

Mullen outlined the process as follows:

- The Planning Board has a public hearing and makes a recommendation to the Selectmen.
- The Selectmen have a hearing on this and hears from anyone who has input. The Selectmen decide if they wish to accept this, if so they vote to do so and file this with the Town Clerk. This will be filed with the Town Clerk at least seven days before Town Meeting.
- The ways get accepted at Town Meeting.
- Within 120 days, this is recorded with the Registry of Deeds.

Pierce asked Highway Surveyor Patrick Snow if he has any questions. Patrick Snow said he has no concerns and he is in favor of these roads being accepted.

Town Planner Kirk Baker said the Planning Board reviewed the As Built Plans on May 27th, and they are complete, but the Planning Board noted that Cindy Lane beyond Wilkes does not go all the way to Meetinghouse Road. He said this will have an impact on the future connection to a future development. He said because it is good planning policy to plan for this, the Planning Board did not recommend accepting the ways unless the applicant at least provides a roadway easement to allow the Town to establish the connection in the future. He said the Planning Board is not saying they don't want to accept these roads, but it is not good planning policy to accept them as applied for. Pierce asked if the Planning Board agrees with all other aspects and that the construction is appropriate. Baker said yes. Pierce said the lack of the easement will only impact the future developer. Baker said yes, any future connection would be impacted and the Planning Board has required future connections. Pierce asked if this has any impact on the residents of the roads. Baker said it has no effect on the current residents, and the current residents would benefit from the roads being accepted.

Mullen said if the Town accepts the roads as presented, that gap would remain the property of the Abuzzara Family Trust. He said if the Meetinghouse Road development was developed in the future, there would be a gap and no connection to a public way.

Pierce said it has been decades since this road was constructed, it is time to accept this for the benefit of the residents of the roads and he thinks we should do this. Perry, Snow and Petersen agreed.

Pierce asked if there are any other questions from the residents of the roads, and there were none.

John Serafini Jr. said he is the trustee for the Farmhouse Realty Trust who owns the abutting land. He said he has voiced his concerns and submitted a letter. He said the Planning Board re-affirmed their position last night. He said the Town is rushing with this and it will leave the Town with an incomplete easement. He said a public easement acceptable to the Planning Board and the Board of Selectmen that will allow a future connection without needing to go to anyone else is a necessity. He said now is the time to put this entire issue to rest, and everyone will win. He said if their access is cut off, they will need to negotiate with the developer to their south. He said the Town's subdivision laws requires the completion of ways as shown on the plan, and this is a danger that the Town and they will be left with a problem with the reserve strip, which is prohibited under the regulations. He said the developer gave up his rights to this when he filed the definitive plans 25 years ago. He said there could be imminent domain damages under Chapter 82 Section 24. He said the bond is for several hundred thousand dollars, and if the developer wants the bond back, he should give the easement. He said the Town will be facing a lawsuit and said at Town Meeting the acceptance should be conditioned upon an easement for public access to be granted, or the article should be pulled until the application is complete. He said he has had long time litigation with the developer and he doesn't want to continue with litigation on an issue forbidden by the Town's subdivision rules.

Mullen said he leaves it up to the Selectmen and Town Meeting to make what they will with the planning issue. He said if the Town is sued for leaving the gap he doesn't see that lawsuit as being successful and thinks it could be dismissed fairly quickly and cheaply. Serafini read the excerpt of the law regarding damages. He said this would be a violation of the rules of the Planning Board and you can't predict the outcome of a lawsuit. He said it is better to avoid a potential lawsuit which is not a productive use of time and money.

John Connolly said he represents the Abuzzara Family Trust now, and Serafini is leaving information out. He said his client was put into this same situation by Serafini. He said Serafini has a lot of land and he doesn't have to tie into this road. Pierce said he would like to have the connection, but Abuzzara isn't offering that now. He said we can either accept the roadway offered or put it off, but it is still his opinion that the residents should come first. Mullen said Serafini is correct on the statute, but all we are doing is laying out a public way, we are not altering a public way. He said his advice is that we don't open ourselves up to a good claim of damages by accepting the plan as it is. Serafini said Connolly is not correct and Farmhouse is not obligated to build anything, but has the right to make a connection in the future. He said Abuzzara is trying to create a situation where the developer will need to pay to gain access to the

public way. He said the subdivision rules are that you aren't supposed to have gaps for others to benefit from. He said the statute he cited is open to interpretation. He said he urges the Town to consider coupling this with an easement which doesn't cost anything for anyone.

Pierce said we have heard from all the interested parties and we should vote to close the hearing. Bob Snow moved to close the hearing, Joe Perry second, the vote was not completed.

Petersen asked if the connection to the abutters land is only through Cindy Lane. Kirk said the current layout would erase that connection. He said the previous connection to Wilson Pond Lane has been altered as well and would need to be redesigned and resubmitted with access through Tenney Road. Petersen said this needs to be redesigned anyways. Serafini said crossing the pond was the original intent, but over the years the pond level has gotten higher and the crossing has been flooded. He said this is not feasible without an enormous engineering expense. He said to go through Tenney Road is a long way, and there are topographical issues. He said the only reasonable access is through Cindy Lane. He asked the Board to take the subdivision laws into account. Petersen said if connecting to other roads will be expensive, then so will the development of the land. He said he would like to move forward and accept Cindy Lane and then take the next step. Pierce said this is probably why the subdivision lapsed about 15 years ago. He said we should act now to do what we can, and next year the Planning Board can hold the bond to get the easement from Abuzzara.

Bob Snow made a motion to close the Street Layout Hearing, Deana Ziev second, all in favor – aye - roll call vote: Bob Snow – aye; Cliff Pierce – aye; Dave Petersen – aye; Deana Ziev – aye; Joe Perry – aye.

Hearing closed at 2:46 p.m.

Bob Snow made a motion to approve and sign the order for the laying out of the roads, Deana Ziev second, all in favor – aye - roll call vote: Bob Snow – aye; Cliff Pierce – aye; Dave Petersen – aye; Deana Ziev – aye; Joe Perry – aye.

NEW BUSINESS

1. Request from Parks and Recreation Committee to use Town playing fields under the State Phase 2 Re-Opening requirements

Petersen said Tim Southall of the Parks & Recreation Committee is in attendance. Southall said he reached out to the Board of Health and submitted guidelines for review which have been signed off on by Frank Marchegiani and Charles Costello. He said he has sent these to Deborah Eagan. He said the playground will remain closed and will be taped off until further notice. Pierce read the guidelines.

Joe Perry made a motion to re-open the Town playing fields under the State Phase 2 Re-Opening requirements, Bob Snow second, all in favor – aye - roll call vote: Bob Snow – aye; Cliff Pierce – aye; Dave Petersen – aye; Deana Ziev – aye; Joe Perry – aye.

2. Appoint MaryAnn Levasseur as an Election Worker

Bob Snow made a motion to appoint MaryAnn Levasseur as an Election Worker, Deana Ziev second, all in favor – aye - roll call vote: Bob Snow – aye; Cliff Pierce – aye; Dave Petersen – aye; Deana Ziev – aye; Joe Perry – aye.

ANNOUNCEMENTS

- The June 22, 2020 Town Meeting has been moved to the Triton Regional High School Auditorium at 112 Elm Street, Byfield MA due to social distancing spacing issues
- Please arrive early. Doors will open at 6:00 p.m. Town Meeting start time is 6:30 p.m.
- Attendees are required to wear face coverings or a mask.
- Seats which allow for appropriate social distancing will be marked.

ADJOURN

Chairman Pierce called for a motion to adjourn. Bob Snow so moved, Deana Ziev second, all in favor – aye roll call vote – Bob Snow – aye; Joe Perry – aye; Dave Petersen – aye; Deana Ziev – aye; Cliff Pierce – aye.

Meeting adjourned at 2:53 p.m.

Respectfully submitted,
Amy Lydon
Assistant Town Administrator

ATTACHMENTS:

1. Meeting memo regarding 2:00 p.m. Street Layout Hearing
2. Disclosure of Appearance of Conflict of Interest filed by Tom Mullen
3. Notice of Street Layout Hearing
4. Street Acceptance Plan Cindy Lane and Bell Circle – 2 maps
5. Order of Laying Out for Cindy Lane and Belle Circle, including Exhibit A
6. Request from Parks & Recreation Committee to use Town playing fields under the State Phase 2 Re-Opening requirements
7. Guidelines for Use of Eiras Park
8. Request from Town Clerk Susan Hazen to appoint MaryAnn Levasseur as an Election Worker

Minutes of the Board of Selectmen Meeting

June 11, 2020

Approved July 13, 2020