

Board of Selectmen Meeting

Tuesday, September 12, 2017 (following the Health meeting)

Board members present: James Consolati, Matthew Puntin, Michael Curtin & Molly Curtin-Schaefer. Others present- see the attached sign in sheet.

Mail was read, previous minutes and treasury warrants were approved.

PUBLIC COMMENT: NONE

PLOWING PRIVATE ROADS - Cooper Creek Road, Lakeside Drive:

James Consolati stated the following issues that have transpired prior to the stoppage of plowing private roads. (Lakeside Drive and Cooper Creek Road)

- The Board was asked to grade Lakeside Drive earlier this year.
- The Board looked into this matter and found that the Town cannot grade the private road and if the town plows these roads the reason has to be primarily for the benefit of the public.
- The Board voted to stop plowing both roads to be in compliance with Massachusetts General Laws. The Board stated in a letter if a legal opinion came before them showing that plowing would be primarily for the benefit of the public the issue could be reviewed.
- Attorney Elizabeth Goodman submitted, for the Cooper Creek Road residents, case law to the Board. James Consolati stated that the case law reinforced the Selectmen's view that public funds spent on private roads has to be primarily for the benefit of the public's use, not incidental use. James Consolati stated that case law referenced 313 Mass. 779, in which the Mass Supreme Court Justices stated that the requirement "open to public use" under the statute means that the towns reason for plowing must be primarily for the benefit of the public.

Attorney Elizabeth Goodman stated she thinks the information as defined by the justices is outdated. She further stated the historic map in the lobby of the Town Hall shows both Cooper Creek and Lakeside Drive.

Matthew Puntin stated he originally agreed with the decision to stop the plowing, however he has spent a lot of time looking over the information turned into the board. He has looked at the definition of removing snow and ice from private roads several times and Mr. Puntin thinks they are open to public use as the signs that stated private have been removed and he is in favor of plowing and sanding.

A discussion ensued and many of the 25 residents of these roads stated reasons why they believe these roads are open to public use. Hikers use the road, vehicles drive down the roads, the roads are used as turn arounds, people fishing park on the roads, the town cruiser patrols this road to name a few. Also of concern were the emergency services to reach resident of these roads, ambulance, fire, and police. A map was submitted to the Board.

Also the residents asked why this issue keeps being reviewed and changed every few years. Prior boards have allowed the plowing and sanding. James Consolati stated he could not speak for prior boards, however, when this board was asked to grade Lakeside Drive earlier this year the issue was reviewed and the Board has to be compliant with the Mass laws.

Michael Curtin stated he felt that Lakeside Drive and Cooper Creek Roads are only open to public use incidentally and Ridge Street is always used by the public, so the Town would continue to plow and sand Ridge Street.

Matthew Puntin stated Chief Holian was on routine patrol on both Lakeside Drive and Cooper Creek Road in the last couple of weeks.

Noah Choquette stated he has not been involved with all of the on and off again of plowing, however, the agreement in 2013 the Town stopped charging the two roads for the plowing and sanding. That way both roads could put the money into road improvements so we would plow them again as long as certain conditions were completed on a mutual agreement with a longer term goal of a road maintenance district or town acceptance as a town road but neither has transpired. Cooper Creek has done a lot of maintenance and Lakeside Drive completed some but not as much.

There was a brief discussion regarding a long-term solution to plowing the private roads. James Consolati stated that the long term solution is town ownership of the roads and that he would support resident efforts for town takeover of the roads.

Matthew Puntin made a motion to authorize the highway department to continue to remove snow and ice from both roads with the contingency that both roads meet certain standards each year that are acceptable to the Town. Lack of a second on this motion, motion failed.

51 COOPER CREEK ROAD:

Molly to contact Larry Gould and Jeremia Pollard regarding any updates.

ATTY GENERAL:

The Attorney General approved the by law for Town Officers. The wording was modified to read: In the event that an elected official does not, or is unable to attend 70% of his/her meetings without a bona fide reason, the Select board shall investigate and take appropriate action. This by law was voted at the May 2017 annual town meeting.

HIRING OF ALAN HAVIL:

Michael Curtin stated the town has 3 officers plus the Chief he wondered why we need more officers. When Chief Holian was on vacation we had no coverage, however 2 of our officers worked details each day out of town. He felt it would be more paperwork and expense to the Town. It was agreed to discuss this issue at the next meeting with Chief Holian.

HIGHWAY DEPARTMENT UPDATES:

Webster Road – will be paved by next year, this fall this job will be started with: binder, curb in spots from Main Road past Margus residence.

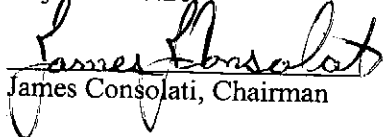
The culvert on Main Road near Tonio Palmers/Matthew Curtin's and the bridge work near 146 Main Road will be completed next year.

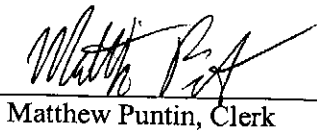
Line Painting – Main Road, Goose Pond Road, Monterey Road and Stonebridge Ways.


Crack Sealing- Goose Pond Road & hopefully McDarby Road.

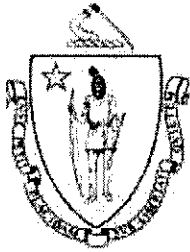
Michael Curtin stated Allen Garner asked if the Town was going to repair the guardrails on papermill hill on Main Road. Noah stated this is in the works, he is working on permitting to repair the ripwrap to install guardrails. (this is near Webster Road).

Adjourned 7:26


James Consolati, Chairman


Matthew Puntin, Clerk


Michael Curtin, Member



MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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August 24, 2017

April A. Curtin, Town Clerk
Town of Tyringham
P.O. Box 442
Tyringham, MA 01264

Re: Tyringham Annual Town Meeting of May 9, 2017 -- Case # 8425
Warrant Article # 16 (Zoning)
Warrant Article # 15 (General)

Dear Ms. Curtin:

Articles 15 and 16 - Except for the text highlighted below in Article 15, we approve these Articles from the May 9, 2017, Tyringham Annual Town Meeting.

Article 15 - Article 15 adds to the Town's general by-laws Chapter 3, "Town Officers," a new section 6 pertaining to absences of elected officials. Specifically, the new section 6 provides as follows (with emphasis added):

In the event that an elected official does not, or is unable to attend 70% of his or her meetings without a bona fide reason, the Select Board shall investigate and take appropriate action **including a vote to remove the elected official from said position and appoint a replacement to serve until the next Town Election.**

We disapprove the text in bold and underline above because it is inconsistent with the Constitution and laws of the Commonwealth, as more fully explained below. [Disapproval # 1 of 1]

A. **Inconsistency with the Constitution and Laws of the Commonwealth.**

1. Inconsistency with Section 7 of the Home Rule Amendment.

The Home Rule Amendment, Mass. Const. amend. Art. 2, § 7, specifically reserves to the state the regulation of elections: "Nothing in this article shall be deemed to grant to any city or

town the power to (1) regulate elections other than those prescribed by sections three and four. . . .”¹ Mass. Const. amend. art. 2, § 7. Towns thus have no authority to adopt by-laws that regulate elections.

The text “including a vote to remove the elected official from said position and appoint a replacement to serve until the next Town Election” (in bold and underline above) attempts to regulate elections in that it proposes to remove an elected official from office. Because this portion of Article 15 would regulate elections, it is in conflict with Section 7 of the Home Rule Amendment and we therefore disapprove and delete it.

2. Inconsistency with State Law.

We also disapprove and delete the text “including a vote to remove the elected official from said position and appoint a replacement to serve until the next Town Election” on the additional basis that it is inconsistent with state law. The election, removal, and replacement of town elected officials are the subject of comprehensive state statutes. See Turner v. City of Boston, 462 Mass. 511, 516 (2012). Municipalities may not remove an elected official from office in the absence of a statutory provision authorizing such removal. Id.; see also Attorney Gen. v. Stratton, 194 Mass. 51, 53 (1907) (vote by Town Meeting to remove members of board of health unlawful); Del Duca v. Town Adm’r of Methuen, 368 Mass. 1, 7 (1975) (terms of an existing elected planning board could not be cut short by changing the board to an appointed board).

There are a number of state statutes pertaining to the removal of an elected official. See, e.g., G.L. c. 41, § 109 (elected official’s voluntary resignation or change of residence to another municipality); G.L. c. 279, § 30 (automatic removal of an elected official when he is sentenced to prison on a felony conviction in state or federal court.) However, there is no statutory provision that would authorize the removal of an elected official from office based upon the official’s failure to attend meetings. Because the text “including a vote to remove the elected official from said position and appoint a replacement to serve until the next Town Election” purports to remove an elected official from office in the absence of specific statutory authorization, we must disapprove and delete this portion of the Article 15, as indicated in bold and underline above.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

¹ Mass. Const. amend. art. 2, §§ 3 and 4 allow cities and towns to adopt or amend charters to regulate elections in certain respects, but those sections are not applicable here.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

Kelli E. Gunagan

by: Kelli E. Gunagan, Assistant Attorney General
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Worcester, MA 01608
508-792-7600

cc: Town Counsel Jeremiah Pollard

BOARD OF SELECTMEN / BOARD OF HEALTHDate: September 12, 2017

Time :

Name:

Elizabeth C. GoodmanPeter ShafferSteve ChunTim KennVictoria JorczakREEMIZY KENNDEWITT THORNTONMARCIA POWDERMAKERBenny WeinRalph & Anne AbbottNora ChoquetteWilliam RocheMark CurtisJohn PhilpottReggy DeSantisWilliam D. Santo Jr.William J. DeSantisJOSEPH JANISSusan JarvisLaura PuntinDorothy NarenteRandy NewtonDonald Santos

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