



LANCASTER SELECT BOARD
Regular Meeting Minutes
of Monday, February 12, 2024, 6:00 P.M.
via ZOOM only

ZOOM: <https://us02web.zoom.us/j/89753500851>

Meeting ID 897 5350 0851

I. CALL TO ORDER

Select Board Chair Stephen Kerrigan called the meeting to order at 6:00PM and advised that the meeting was being recorded and broadcast via ZOOM and via Sterling-Lancaster Cable Television.

Additional materials for Select Board meetings are available at <https://www.ci.lancaster.ma.us/administration-select-board> > Meeting Materials.

Roll call vote taken, Jason A. Allison, not present at roll call, Alexandra W. Turner, present, Stephen J. Kerrigan, present. Also present, Kate Hodges, Town Administrator and Ivria Fried, Town Counsel. A quorum was in attendance.

Mr. Richard Trussell took a roll call of the Finance Committee. Jocelyn Mylott, absent; Stanley Starr, absent; Emily Notaro, present; Michelle Vasquez, present; Richard Trussell, present. A quorum was in attendance.

Mr. Frank Streeter reported that a quorum of the Planning Board was present, taking a roll call. Kendra Dickinson, present; George Frantz, present; Regina Brown, present; Mike Favreau, absent; Frank Streeter, present. Mr. Streeter noted that the second part of their meeting has been posted and followed this meeting.

Mr. Tom Seidenberg of the Conservation Commission reported that while he does expect a quorum, there was not one present at the onset of this meeting. Mr. Kerrigan asked that Mr. Seidenberg notify him when a quorum was present. A few minutes later, Mr. Seidenberg reported that a quorum was present and took roll call. Bruce McGregor, present; Dennis Hubbard, present; Tom Seidenberg, present. James Lavalley and Shawn Winsor were absent.

Mr. Doug DeCesare was present from the Board of Public Works, but other members were not in attendance.

Mr. Robert Alix was present from the Board of Appeals, but other members were not in attendance. While roll call of boards was still in progress, Jean Rich reported that both she and

Dennis Hubbard were present, so a quorum was reached. Mr. Alix took roll call. Jean Rich, present; Dennis Hubbard, present; Rob Alix, present. Members Frank Sullivan and Eric Jakubowicz were absent.

II. SCHEDULED APPEARANCES & PUBLIC HEARINGS

The Select Board hosted a Joint Meeting with the Planning Board, Zoning Board of Appeals, Conservation Commission, Finance Committee, and Board of Public Works Commissioners, as well as other interested parties and Town Counsel, to discuss current and past circumstances and outstanding items surrounding the project commonly referred to as the “Hawthorne Lane Development.” Individual Boards and Committees posted their own agendas separately with the Clerk.

Mr. Seidenberg noted that as an abutter he will recuse himself from voting as a member of the Conservation Commission, although he will speak as an abutter.

Mr. Kerrigan stated that topics needing review included the Open Space piece, the easement, and whether or not the road would be a public road. He asked Chairs of other attending boards if there were other large issues that should be addressed. Mr. Trussell asked to discuss the fiduciary amount on deposit somewhere. Ms. Hodges, Town Administrator, noted that the Massachusetts DEP citations for the water supply needs to be discussed. Mr. Seidenburg noted that in addition to the Open Space Parcel, he is concerned with one outstanding expired Order of Conditions. Mr. Alix deferred to Ms. Rich.

Town Counsel Ivria Fried gave a general overview. She reviewed permitting history, starting in 2015. Because of permitting extensions granted by the Governor during the COVID pandemic, the permit for modified subdivision approval expires on May 19, 2024. The Planning Board, at the request of the developer, can extend that deadline, but this date is currently in place. If the project is not completed or extended prior to May 19, the permit will automatically rescind.

Atty. Fried explained that, regardless of reasons why or why not, there is no valid homeowners association connected with the Hawthorne Lane Development; one was supposed to have been created. Some common areas are held in a trust, one of the conditions of the permit.

Atty. Fried continued, explaining that the booster station is shown on a set of plans that the Planning Board looked at on the Open Space parcel, although the exact location was not shown. Mr. Kerrigan noted that the “booster station” term is used interchangeably with “pump station.” A permit was issued in 2019 to site the booster station along George Hill Road in the Open Space parcel. Appeals were taken; former counsel had noted that while some of the appeals were untimely, ultimately it was upheld. The former Building Commissioner and former Board of Appeals agreed with former counsel, and it was never appealed further, so it is sited correctly in the Open Space parcel. In terms of ownership and maintenance, there is no indication in the record that the Town promised to take it over, however there is some suggestion that it was available to the Town as an option. The permit that DEP issued states clearly that the ownership and maintenance of the booster station shall be done by the Homeowners’ Association until and if the Town decides to take it over. One imperative issue from a legal position is that the Town

needs to have sufficient control over the booster station so that if something goes wrong, because it is connected to the public water supply, we can go in and fix it. There is precedent for this in Lancaster; there is an easement in the Eagle Ridge development to address a similar situation.

Continuing, Atty. Fried said that in terms of the open space parcel, the permitting decisions, and the Zoning Bylaw requires that at least 40%, and here it's 55% of the property be restricted with a Conservation Restriction, or held by the Conservation Commission. So that hasn't occurred yet. That's something that should happen in order for the development to come into compliance with the permit. We can talk about how to accomplish that with the booster station. Just so everyone knows, it's not uncommon for there to be conservation restrictions over parcels that have structures. You can do this a couple of different ways. You can create building envelopes. You can exclude just certain portions of the site. So it's not in and of itself an issue that you're going to conserve a site that has a booster pump station on it, provided the legal documentation to place that conservation restriction addresses the issue that there is a booster pump station, and we will need to do sufficient maintenance, or whoever's in charge of that booster pump station is able to do that maintenance. There was an issue that no one is really talking that much about, so it may be moot and I would defer to DEP in this situation, but we were supposed to get a utility easement over the open space parcel and one of the lots (I believe it's Lot 9, 62 Hawthorne Lane.) We have not seen that easement. I have no record of ever receiving a deed to that effect. So if that's something that the Town still needs for certain purposes we need to address that as well.

Ms. Turner asked, "Did that indicate that it was for water, or is it just carte blanche utility?"

Atty. Fried said that it is just carte blanche utility, although she thought the intent was always for it to be used for water, but the way that it's discussed and drafted is broader than that, so I don't know if we need it for electrical or for water, but that she would defer to town engineers and DPW to guide that conversation.

Atty. Fried continued, stating that the bigger issue that a lot of people have been talking about is the private way and what to do about the private way. As discussed, the permit says that either the Homeowner Association should hold the way or the town could take the way. But it's not a requirement anywhere in any of the permitting documents that the town acquire the way. Current Counsel and/or board members were not around at the time, but from the permits, the Town is not obligated to take the way, and we can talk about what it looks like to take a private way, if that's the route that the town wants to go down. There was reference made to a bank account, so the surety that was involved here, was a restriction on the sale of any individual lots. So the developer was supposed to complete all of the roadwork before he was able to sell any of the lots. That didn't occur here. There is no bond. At some point it looks like the Planning board voted to create some type of account, and the developer may have been willing to do that, and money was set aside. But our office, town staff and the bank themselves can find no indication that the town has any legal rights to those funds. So to the extent the developer is interested in giving us those funds and walking away from the project, and in an exchange we'll take the open space, take the way, take the booster pump station - that's something we can talk about, but legally, we have no ability to seize those funds even after the May 2024 permit expiration. Atty. Fried concluded, saying that this was a very high level overview of many topics, but that in her opinion, Town Control of the booster pump station is the most important issue to be addressed as soon as possible.

Mr. Kerrigan noted that these issues will not be solved at this meeting, but hopefully a framework for resolution could be developed.

Mr. Kerrigan asked Mr. Seidenberg to clarify whether or not the Conservation Commission wanted to accept the land being discussed. Mr. Seidenberg said that he did not believe that the Commission has taken a position, deferring to Vice Chair of Conservation Commission Jim Lavallee (now present.) Mr. Lavallee stated that a position has not been taken, but the former Conservation Agent, David Koonz, had advised against accepting the parcel, calling it “damaged goods” because the pond had been altered and trees in the buffer zone had been cut down. Because there is now a Certificate of Compliance and a restoration plan has been put in place, there may be a change to this position, although the Conservation Commission has not discussed. Mr. Kerrigan asked if this might be put on a future Conservation Commission agenda. Mr. Lavallee said yes, and that discussion could be had about the ownership of the pump house, i.e., would the pump house be owned by the DPW or should the Conservation Commission own it with some kind of easement or use agreement for the DPW.

Atty. Fried noted that ownership of the Open Space is not complete. The parcel was taken by filing an Instrument of Taking due to back taxes, about \$1600. She suggested that an arrangement for ownership at no cost might be made with the developer.

Mr. Kerrigan suggested that if the Conservation Commission does not accept the Open Space land, then the Select Board could accept it prior to the deadline. It would require Town Meeting approval to accept. The Town could seek an easement again, asking the developer to give the land to the Town at no cost and to pay all back taxes. It would then go to Town Meeting for approval and would go to the DPW.

Ms. Turner asked about expenses to the Town, in terms of both money and staff, for maintenance and monitoring, and possible ownership by some other preservation agency. Atty. Fried said that this was possible; Mr. Kerrigan reminded that the Town needs to maintain control of the pumping station because of the link to the public water supply. Atty. Fried concurred that from a legal perspective, control of the pumping station is the most important part of this conversation. Last resort would be through eminent domain, although this is unlikely.

Ms. Turner asked if Atty. Fried has had conversations with the developer. She has not at this point although Ms. Hodges has spoken with him several times, although not in the last 5-6 months. Mr. Kerrigan re-stated the options discussed above for dealing with the pump station. Atty. Fried re-stated that she would be most comfortable with a full easement, and could consider some form of licensing agreement as a stopgap measure until this was completed.

Ms. Turner asked about the utility easement at 62 Hawthorne. Ms. Hodges explained that this is different from the pump station discussion; this is the Fire Road, and Atty. Fried verified that there need to be conversations with the resident/owner at this address.

Mr. Trussell asked what the Town had that could make any of the discussion items enforceable, and how would the mistakes made here apply to further development. Ms. Hodges noted that the

Planning Board is working on new policy that would correctly apply a surety bond to projects like this going forward. Atty. Fried agreed that in this case there is no surety bond to fall back on.

Mr. Lavallee clarified that one option is a conservation restriction where an “envelope” is carved out for the area with the pump station.

Mr. Streeter, representing the Planning Board, referred to Clause #7, which speaks to the developer creating a second utility easement to span one of the lots of the Open Space and to connect to the Eagle Ridge property. Atty. Fried agreed that documentation on the second easement is “a bit foggy.” She said that one option, and the developer would have to be willing to engage, would be to re-open the permitting process. Ms. Hodges noted that the easement for the pump station at Eagle Ridge was never accepted by Town Meeting, but that she has written to them and hopes to close this issue.

Ms. Rich (Zoning Board of Appeals) clarified that the easement that the Planning Board put from the Eagle Ridge property line down to the pump station was in the event that the Eagle Ridge Homeowners Association would ever agree to allow an extension of their water booster station into this project. She stated that the Water Station at Eagle Ridge is owned by their Homeowners Association, and that the Town has no authority to tie into it or make a loop.

Mr. DeCesare (DPW), stated that he has just spoken with former DPW Superintendent Kevin Bartlett, and that the Town never did take over the pump station at Eagle Ridge. Mr. DeCesare stressed that the Town should not take over any pump station until the pumps are inspected.

Attorney Fried clarified that the Town does have an easement on the Eagle Ridge pump house in order to access it for maintenance if something were to go wrong. Weston & Sampson has an operating agreement, paid for by the Homeowners Association. This information will be shared with the DPW.

Mr. Kerrigan, noting that the Planning Board needed to leave this meeting to attend their own posted meeting.

Mr. Hubbard asked about comparing costs for Town Ownership versus easement on the Open Space area and the pump station. Attorney Fried said that without a Homeowners Association, and with the developer being “MIA” that if expenses were incurred the Town would likely have to expend funds regardless of easement or ownership.

Ms. Turner said that problems had been caused by both not having a bond and by issuing certificates of occupancy, and she wanted to make sure both these areas had been corrected going forward. She asked if the Town was “on the hook” if the developer walks away or is not in business.

Mr. Kerrigan cautioned against implying that the developer of the Hawthorne Lane project was not in business, when this is not known to be true. Attorney Fried reiterated that the Town is responsible to maintain the public water supply.

Mr. Trussell asked about the value of the pump station, and if the two pump stations, Eagle Ridge and Hawthorne Lane, could be tied together. Mr. Kerrigan stated that this would require a lot of supposition that there are no current answers for, and that Eagle Ridge is not part of this conversation.

Ms. Dickinson asked about Fire Department feedback, since there have been concerns about water pressure issues. Ms. Hodges stated that there is no truth to this, and that on August 31, the Fire Chief wrote to her stating that water pressure was adequate in this location, and that the easement requirement would help with Fire Department access, not water pressure.

Mr. Streeter suggested that liability insurance, either the developer's or the Town's, might provide some relief to not having a surety bond.

Mr. Kerrigan, in an effort to summarize the meeting, recommended:

- Boards mutually agreeing to having Town Administrator Hodges to work with Attorney Fried to continue working on the easement issues to get ready to go to Town Meeting in some form;
- Conservation Commission to address the easement question and hopefully to define a position on accepting the Open Space land;
- Planning Board to work with the Planning Director and to address whether or not an extension is needed past May 19
- Mr. Kerrigan will work to schedule another joint meeting to discuss roadway issues.

Mr. Hubbard moved to close the Conservation Commission meeting. *Vote taken; Bruce McGregor, Aye; Dennis Hubbard, Aye; Jim Lavalley, Aye. Motion passed. [3-0-0]*

The Planning Board did not adjourn, since they were moving into their own meeting under a separate ZOOM address.

Xxx moved to close the Zoning Board of Appeals meeting. Mr. Hubbard seconded. *Vote taken, Mr. Hubbard, Aye; Jean Rich, Aye; Rob Alix, Aye. Motion passed, meeting adjourned at 7:14 pm [3-0-0]*

Mr. Trussell moved to close the Finance Committee Meeting. Ms. Vasquez seconded. *Vote taken. Jocelyn Mylott, absent; Emily Notaro, Aye; Michelle Vasquez, Aye; Stan Starr, absent; Richard Trussell, Aye. Motion passed. [3-0-0]*

III. ADMINISTRATION, BUDGET & POLICY

1. Select Board to Open 2024 Annual Town Meeting Warrant

*For Annual Town Meeting scheduled for May 6, 2024;
For Annual Town Election scheduled for May 13, 2024; and
To set a date for which the Select Board shall close the warrant.*

Ms. Turner moved to Open the Warrant for the Annual Town Meeting to be held May 6, 2024. Mr. Kerrigan seconded. *Vote taken, Alexandra W. Turner, Aye; Stephen J. Kerrigan, Aye. Motion passed. [2-0-0].*

Ms. Turner moved to Open the Warrant for the Annual Town Election scheduled for May 13, 2024. Mr. Kerrigan seconded. *Vote taken, Alexandra W. Turner, Aye; Stephen J. Kerrigan, Aye. Motion passed. [2-0-0].*

Mr. Kerrigan stated that the date for closing the Annual Town Meeting Warrant will be decided at the next Select Board meeting.

2. FY25 Budget Update & Review – Revised Totals, FTE's, etc.; Draft #2 Distribution

Version 2 of the Budget has been released. With zero-based budgeting, the current numbers show a General Operating Fund decrease of \$36,577 year-over-year. Ms. Hodges reported that she is still waiting for final numbers from the Nashoba Regional School District.

3. Acknowledgement of Acting Town Administrator in Administrator Hodges' Absence (2/15-2/24)

While Ms. Hodges is out of Town, Kelly Dolan, Health and Human Services Director, will serve as Acting Town Administrator. Mr. Kerrigan asked for a vote to ratify this; Ms. Turner moved to acknowledge Kelly Dolan as Acting Town Administrator from 2/15/24 until 2/24/24. Mr. Kerrigan seconded the motion. Mr. Kerrigan seconded. *Vote taken, Alexandra W. Turner, Aye; Stephen J. Kerrigan, Aye. Motion passed. [2-0-0].*

4. Review & Adoption of Forest Legacy Program, request from Lancaster Conservation Commission

Tom Seidenberg of the Conservation Commission summarized this program. The Land Trust is asking the Conservation Commission to accept Conservation Restrictions, if the Select Board is so willing, on portions of the Town Forest and the Blood Forest currently not permanently conserved. The majority of the land is not permanently protected. This would result in matching funds for a grant program. The Conservation Commission voted in favor of this at their last meeting.

Mr. Kerrigan recognized Robert Lidstone from the Land Trust. Mr. Lidstone explained additional details regarding some privately held parcels of land. He explained that this is an opportunity for millions of dollars in federal money to cover due diligence and land protection for environmental habitat and recreation. Ms. Turner suggested that Victoria **Petracha** and Frank Streeter should be invited to the meeting that discusses this further since they have done an enormous amount of work on this project. Ms. Turner had additional questions on timing and costs. Mr. Lidstone said that the deadline is just under two years from now and that the money currently in questions is probably about \$100,000 which will be reimbursed by the State.

Mr. Kerrigan asked Ms. Hodges to work with Counsel and to place this on an upcoming agenda.

IV. APPOINTMENTS & RESIGNATIONS

Appointments

Historical Commission – Kendra Dickinson, Associate Member

Mr. Kerrigan asked to table this to a future agenda.

V. LICENSES AND PERMITS

VI. COMMUNICATIONS

- Town Offices will be closed Monday, February 19, 2024 in observance of Presidents' Day
- Next Select Board meetings will be held on Mondays March 4 and March 18, 2024.
- Miscellaneous Correspondence and Memorandums

VII. ADJOURNMENT

Ms. Turner moved to adjourn the meeting. Mr. Kerrigan seconded. *Vote taken, Alexandra W. Turner, Aye; Stephen J. Kerrigan, Aye. Motion passed; meeting adjourned. [2-0-0].*

Respectfully submitted,

Kathleen Rocco
Executive Assistant

APPROVED

Alexandra W. Turner, Clerk