

**AGENDA
BOARD OF SELECTMEN
October 28, 2008
7:00 p.m.
Town Building**

Public Input

Chairman's Comments

Visitors

- 7:05 Land Use Task Force Status Report – Rick Lent, Chair
- 7:30 Borrowing for new fire truck – Pam Landry, Treasurer-Collector
- 7:35 Whitman Street shade tree – Bruce Fletcher, Tree Warden

Town Administrator's Report

Meeting Minutes

Action/Discussion

- Selectmen's appointment to Municipal Affordable Housing Trust
- Community Preservation Act funds
- Effect of Question 1 on cities and towns
- ESBC donation account
- Designation of alternate polling places

Selectmen's Master Planning

Liaison Reports, if any

Correspondence

Adjournment

Posted 10/24/08

Correspondence

Town:

Two resident letters re Whitman Street, rec'd 10/17

One state and one federal response to Town appeal to restore Assabet River Rail Trail funding, rec'd 10/17 and 10/20

Resident letter recommending restoring playground on Town land in Gleasondale, rec'd 10/22

Susan McLaughlin

From: Susan McLaughlin [selectmen@stow-ma.gov]
Sent: Monday, October 06, 2008 12:12 PM
To: Terri Cole; Susan Wusk; Ross Perry (H); Rachel Belanger; Peter Masters; Pat Perry; Pam Landry; Mike McLaughlin; Mike Kopczynski; Mike Clayton; Mike Busch; Michael Wood; Mark Trefry; Marcia Rising; Lois Costello; Lisa McNiff; Linda Hathaway; Laura Spear; Laura Greenough; Kathy Sferra (Home); Karen Gray; Karen Kelleher; John Makey; John Bolton; Jim Sauta; Jean Lynch; Ingeborg Hegemann; Greg Jones; Fred Dodge; Ed Tarnuzzer; Dwight Sipler; Dotty Wilbur; Donna Jacobs (h); Don McPherson; Don Rising; Deb Seith; Craig Martin; Charles Kern; Bob Wilber; Bob Barrell; Beth Tobey; Barbara Sipler; Alyson Toole; Ellen Sturgis; Jason Robart; Kathleen Farrell; Steve Dungan; Tom Ruggiero
Cc: Jon Witten; Bill Wrigley; Anne VanTine
Subject: RE: Chap 61 review meeting, Thurs, Oct 9, 7-9 pm, Warren Room

Hi everyone,
Here is a message and two documents from Rick Lent for this Thursday night's LUFT meeting. Please bring copies to the meeting, if possible. There will be extra printed copies there, also.
Thank you.
Susan

From Rick:

Attached are two documents for Thursday's LUTF meeting to review draft process for responding to lands under Chapter 61.

There is a word document which is the full text description of the process and a PDF of a Visio flow chart which provides an overview of the process. We will be referring to both on the meeting.

-----Original Message-----

From: rickmlent@aol.com [mailto:rickmlent@aol.com]
Sent: Friday, September 12, 2008 11:12 AM
To: selectmen@stow-ma.gov
Subject: Invitation for Chap 61 review meeting

As part of its charge, the Land Use Task Force is developing a process for the town to use in responding to future opportunities to purchase land under the 120 day provisions of a Chapter 61 property. We are inviting representatives of all interested town boards and committees to attend our committee meeting in on October 9 from 7-8 PM to review and discuss the draft version of this process. Your input will be used to help us shape the next version of this process that will then be reviewed with the Board of Selectman later in the month. Please join us at 7PM on October 9 in the Town Building.

Town of Stow **Chapter 61 Lands Policy and Process**

Whereas the Town of Stow ("Town") encourages owners of open lands used for forestry, farming or recreation to enroll their property in the Chapter 61, 61A and 61B preferential tax programs in order to help maintain these lands in their current use, but in doing so, forgoes tax revenue that would otherwise be generated by these lands; and

Whereas owners of land enrolled in these programs are required to grant the Town a 120-day assignable right of first refusal in the event that these lands are proposed to be sold or converted for other uses; and

Whereas the Town of has the ability to exercise its right of first refusal on land sold for, or converted to, another use within one year of leaving Chapter 61, 61A and 61B; and

Whereas the Town has ongoing needs for land for municipal purposes including conservation land and finds it in the Town's best interest to give full consideration to the opportunity presented by withdrawal of land from these programs, to gather information from relevant boards and staff, and to determine whether the Town should exercise or assign its right of first refusal;

Whereas the Town has formed a "Study/Evaluation Group", composed of the chair of the Stow Planning Board, Stow Board of Selectmen, Stow Conservation Commission, Stow Open Space Committee, Stow Board of Health, and Stow Agricultural Commission (or their designee) to assist the Town in evaluating parcels and completing the right of first refusal process.

Therefore the Board of Selectmen adopts this Chapter 61 Lands Policy to set forth a clear process by which the Town will review and respond to notices of conversion and sale of lands in Chapters 61, 61A and 61B and determine whether or not to exercise or assign its right of first refusal on these lands. These policies and procedures are adopted solely for the purposes of coordinating local review. Failure to adhere to these policies and procedures shall not affect any rights that the Town has under MGL Chapters 61, 61A and 61B, nor shall they affect any rights of the landowner.

Note: For the purposes of this document, the following items that are required by statute are noted in italic type. This is not an exact replication of the wording of the statute. Other items are adopted as part of this policy. The statute should always be consulted for exact wording.

A. Right of First Refusal

Within 120 days of mailing (not receipt) of a proper notice, the Town must either:

1. *Act to exercise its option to purchase (to meet a bona fide purchase offer or, in the case of intended conversion by the landowner, an option to purchase at full and fair market value), recorded at the Registry of Deeds,*
2. *Assign its rights to a non-profit conservation organization or the Commonwealth or any of its political subdivisions, recorded at the Registry of Deeds, or*
3. *Notify the property owner that it does not intend to exercise its right of first refusal.*
4. *Failure to record either the notice of exercise or the notice of assignment within 120 days is also considered conclusive evidence that the Town will not exercise its right of first refusal.*

B. Requirements for Notice by Property Owner

1. *The 120-day right of first refusal time period begins with a notice of the landowner's intent to sell or convert a parcel for commercial, industrial or residential use. This notice must be sent by certified mail or hand delivered to the Town of Stow Board of Selectmen, in addition to the Planning Board, Board of Assessors and Conservation Commission, and to the State Forester. This notice must include the following:*
 - a. *A statement of intent to sell or convert,*
 - b. *A statement of proposed use of the land,*
 - c. *The location and acreage of land as shown on a map drawn at the scale of the Town's Assessor's maps*
 - d. *The name, address and telephone number of the landowner,*
 - e. *In the case of an intent to sell, a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited only to the property classified under the Chapter, and must be a bona fide offer,*
 - f. *The purchase and sale agreement must be a bona fide offer, defined as a good faith offer not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of, development of the property for industrial or commercial use, made by a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed,*
 - g. *Any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under the Chapter, but sold or to be sold contemporaneously with the proposed sale,*
 - h. *A notarized affidavit that the landowner has mailed or delivered the notice will be conclusive evidence that the notice has been mailed in the manner and at the time specified,*
 - i. *In the case of an intent to convert the land to other use, the landowner must also notify the Town of the landowner's attorney, if any.*

C. Procedure for Review of Notices and Evaluation of Properties

1. *Within three days of receipt of a proper Notice from a landowner, the Board of Selectmen's office will ascertain that Notice, with the required information, was also properly transmitted to the Planning Board, Board of Assessors and Conservation Commission. Within this same*

period, copies of the Notice will be provided by the Board of Selectmen's Office to members of the Study/Evaluation Group and to the Community Preservation Committee, Historic Commission, Stow Municipal Affordable Housing Trust, Stow Conservation Trust, and any other relevant boards and town officials. The Board of Selectmen's office will provide a copy of the Notice and relevant information to Town Counsel for review.

2. The Board of Selectmen's office will also determine the final day of the 120-day period in consultation with Town Counsel and attempt to seek confirmation from the landowner or his/her representative regarding this date.
3. The Board of Selectmen will consult with municipal counsel to review the notice, including the purchase and sale agreement, and determine whether the purchase and sale agreement is a bona fide offer and whether the Town is being given the same opportunity as the buyer with regard to the terms of the agreement. Ideally this determination will be made within five (5) days of receipt of the Notice.
4. *If the Notice is determined to be insufficient, the Board of Selectmen will immediately, but, in no event, in no more than 30 days from receipt of the Notice, transmit a certified letter notifying the landowner in writing that the proper notice has not been given and informing him/her that the 120-day clock has not started.* A copy of this letter will be provided to the Planning Board, Board of Assessors and Conservation Commission and other boards/officials in Paragraph C(1). A cover letter shall indicate the date of a Joint Boards meeting to be scheduled within three weeks of the receipt of the Notice.
5. The Board of Selectmen shall request that the Study/Evaluation Committee gather information on the property to determine its conservation and other values and provide a preliminary report to the Board of Selectmen and Town Administrator within five (5) working days. An analysis of the location of the property relative to other protected lands shall be performed along with an environmental assessment. A determination will be made whether the property contains any unique geological or other environmental features, important soils, a drinking water source, or historical attributes. Zoning and subdivision control regulations will be examined to determine the impact of the potential development on town services.
6. The Board of Selectmen shall hold a Joint Boards meeting, inviting all relevant municipal boards and committees. At that meeting, the information gathered by the Study/Evaluation Committee shall be presented and all boards and committees shall be given the opportunity to present any additional information that may be relevant to the parcel and indicate their potential interest in pursuing exercise of the Town's right of first refusal and the potential of the property to meet the town's needs for land.
7. At the conclusion of the Joint Boards meeting, the Board of Selectmen shall determine whether or not there is interest in proceeding with further evaluation of the property. At that time, if there is no interest, the Board may execute a waiver of the Town's right of first refusal. If there is interest in further evaluation, the Board shall request that the Town Administrator appoint a Working Group to conduct further evaluation of the property and bring one or more proposals for the use of the property and the funding for the acquisition to the Board of Selectmen. The membership of the Working Group shall be as broad as needed to ensure that all parties with an interest in pursuing acquisition of the property are included. The Board shall also schedule and give notice of a public hearing for the purpose of receiving comments on the importance of the property to the Town, its conservation significance and/or potential for use to serve municipal needs and for receiving a report from the Working Group. Ideally, the public hearing will be scheduled within three (3) weeks of the Joint Boards meeting. In those cases where there is a proposed conversion of the land but no sale, the determination of sale price may take as long as 90 days, at which point the

public hearing will be scheduled (see section C (7)). *Notice of the hearing is required to be given in accordance with M.G.L. Ch. 39, Section 23B (Open Meeting Law).* The Board of Selectmen will also notify the Planning Board, Conservation Commission, Open Space Committee and Board of Assessors, and (the other boards and organizations listed in paragraph C (1)). *The option to exercise the right of first refusal may only occur after a public hearing.*

At the public hearing, the Board of Selectmen will afford interested boards, organizations and individuals the right to comment. If there continues to be interest in pursuing acquisition of the property for municipal uses or in assigning the right of first refusal to a non-profit conservation organization or to the Commonwealth or one of its political subdivisions, the Board of Selectmen may continue the public hearing as needed to allow time to present a more specific proposal for consideration by the Board.

7. *If the landowner is converting the property, and the Town is interested in the option to purchase the land at fair market value, the Town will hire a qualified independent appraiser, and obtain the appraisal within 30 days of receiving the notice to convert. If the landowner contests the appraisal, the landowner may hire a qualified independent appraiser and obtain an appraisal within 60 days of the notice to convert. If the Town and the landowner cannot agree on an appraised value, then the two parties will jointly hire a third appraiser and obtain an appraisal within 90 days of the notice to convert. The price of the third appraisal will prevail if there is a sale, but at anytime the landowner may withdraw his or her notice to convert. Upon agreement of a consideration, the Town will have 120 days to exercise its option.*

D. Decision by the Town of Stow

Based on input at the public hearing and further research as warranted, the Board of Selectmen will close the hearing and determine whether or not to pursue the opportunity to exercise the right of first refusal and for what purposes. The Board of Selectmen must choose one of four courses of action:

1. If the Board of Selectmen agrees to put the option exercise to a Town Meeting vote, the Board of Selectmen shall:
 - Schedule a town meeting for the purpose of appropriating funds to purchase the property, place a warrant article on the town warrant for this purpose, and schedule a debt exclusion vote (if necessary) for the purpose of authorizing expenditure of funds. The town meeting must be scheduled within the statutory 120-day period, unless an extension of this deadline is agreed to in writing between the parties.
Record the notice to exercise the option at the Registry of Deeds as part of an affidavit of a notary public during the 120-day period.
 - *Notify the landowner by certified mail during the 120-day period, at the address specified in the landowner's notice, of the Town's intent to exercise its option.*
 - *Closure on the property must occur within 90 days of the Town's decision to exercise its right of first refusal, unless otherwise agreed to in writing by the parties.*
2. If the Board of Selectmen desires to assign its right of first refusal to a qualified land trust/conservation agency, the Board of Selectmen shall:
 - *At a public hearing during the 120-day period, vote to assign its right of refusal to the non-profit organization, setting forth any terms and conditions of the assignment. [Note: the non-profit conservation organization or the Commonwealth or any of its political*

subdivisions must conserve at least 70% of the property in a use consistent with one of the three Chapters, or no less a percentage conserved than proposed by the developer whose offer gave rise to the assignment, whichever is greater, but may be permitted to undertake a limited development on the balance of the property. The Board of Selectmen may place conditions on this use; for example the number of lots in the limited development can be specified.]

- *Record the notice to exercise at the Registry of Deeds as part of an affidavit of a notary public during the 120-day period.*
 - *Notify the landowner by certified mail during the 120-day period, at the address specified in the landowner's notice, of the Town's intent to assign its option to a non-profit conservation organization, stating the name and address of the non-profit organization and the terms and conditions of the assignment.*
 - *Closure on the property must occur within 90 days of the Town's decision to assign its right of first refusal, unless otherwise agreed to in writing by the landowner.*
3. If the Town decides to forgo its right of first refusal, the Board of Selectmen should:
- *Examine wisdom of recording a limited waiver of its rights at the Registry of Deeds. Any waiver of the Town's rights should be specific to the proposed purchase terms so that if the sale falls through and a new proposal comes forth, the 120-day clock will begin again.*
 - *The Town shall use as much of the 120-day period as is necessary to properly evaluate the property and the potential of exercising or assigning the right of first refusal. It is possible that the Town may decide that it cannot afford to purchase the property, but any such choice should be thoroughly discussed and researched before making such a determination. Where there is consensus on the absence of conservation value or where the Town has negotiated a signed agreement with the landowner and/or developer that meets the municipal needs with regard to the property, the town may choose not to exercise its right. Any such negotiations, however, should occur in consultation with the boards/committees entitled to notice by statute.*
4. *The Town can fail to act within the required 120-day period (and any extensions thereof), in which case the Town will be deemed to have failed to exercise its right of first refusal.*

Town receives and begins review of notice of sale or conversion

*for 10/19/08
LUFA revision*

Running
Timeline

Conversion
Flow chart

Is there a proposed sale?

NO

YES

Confirm that notification
was sent to PB,
ConComm, BoAssessors

Copy to Town
Counsel

Copies to Study/Evaluation Group, CPC,
Historic Comm, SMAHT, SCT

3 days

Was notice
sufficient?

NO

YES

Determine
120 day
period

Determine whether
Town given same
rights as buyer

NO

YES

Inform landowner
of problem

S/E Group
researches
location &
attributes of
parcel

5 days

S/E group gives
preliminary report
to BoS

Joint Boards
meeting

BoS Decides whether to form
working group and hold public
hearing

NO

YES

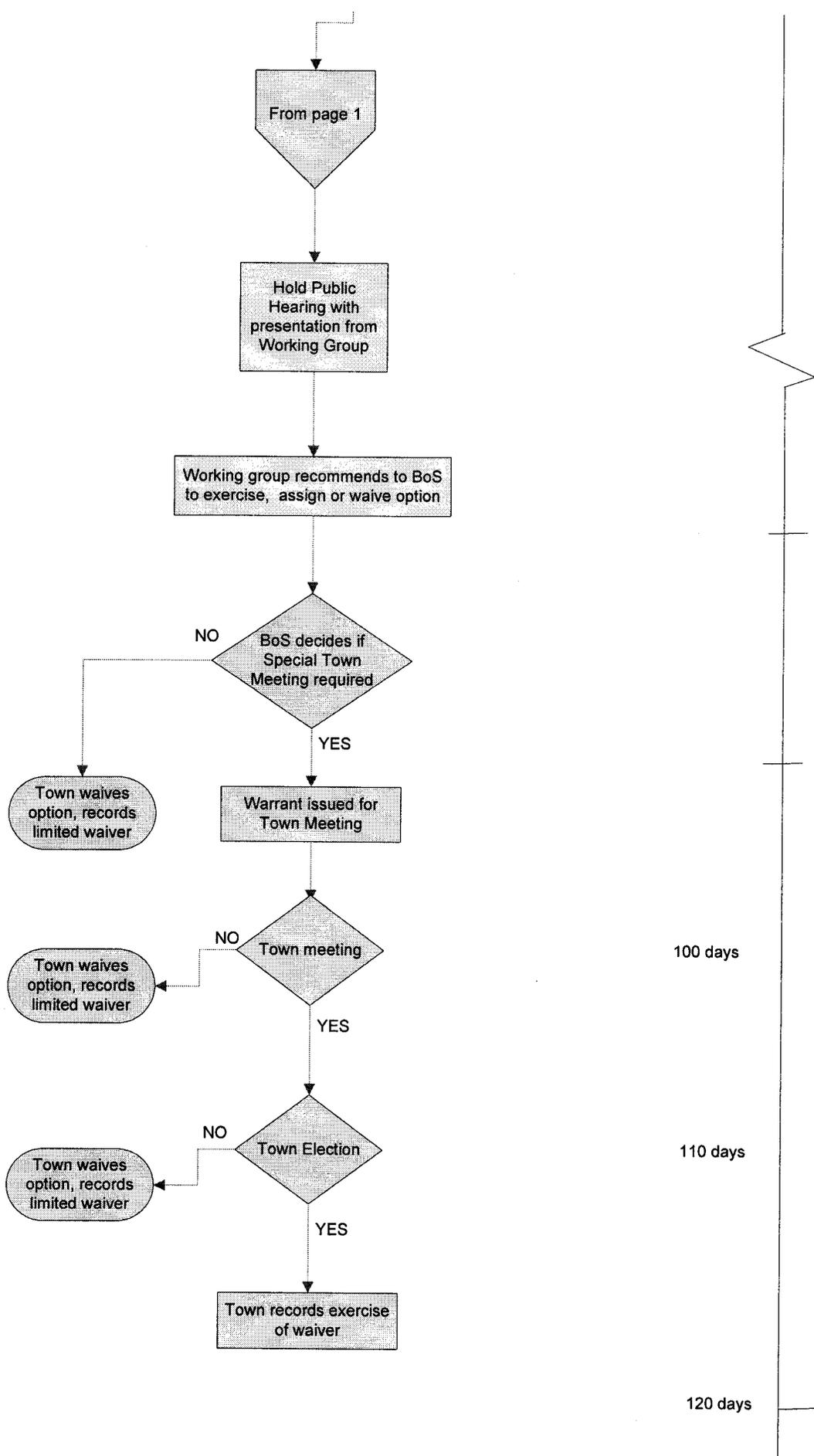
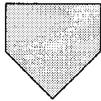
Town waives
option, records
limited waiver

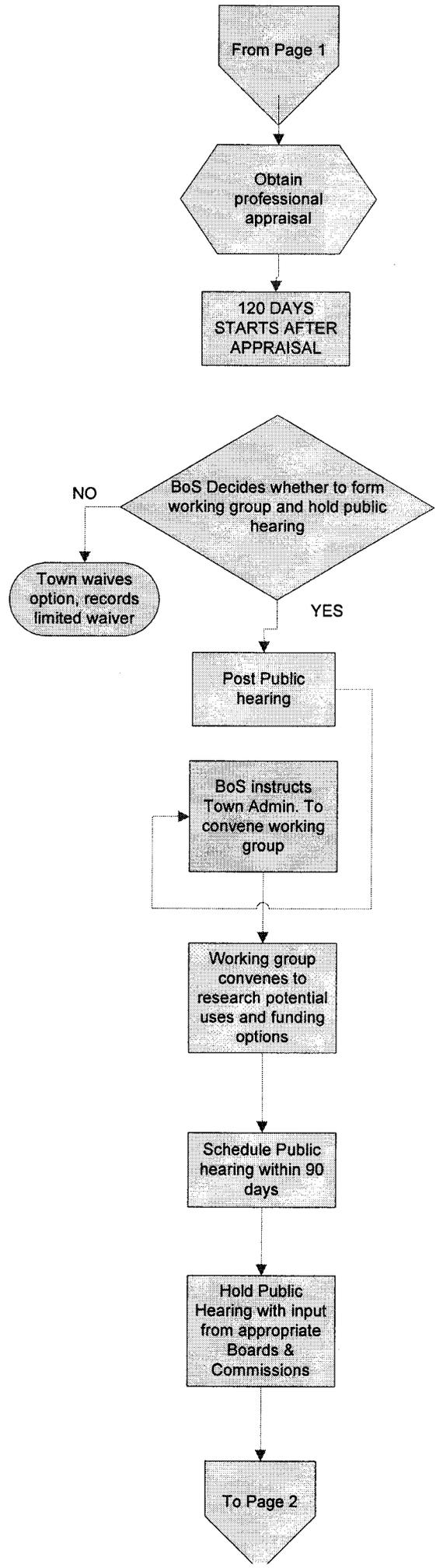
Post Public
hearing

BoS instructs
Town Admin. To
convene working
group

Working group
convenes to
research potential
uses and funding
options

Continued
on page 2





Susan McLaughlin

From: Susan McLaughlin [selectmen@stow-ma.gov]
Sent: Thursday, October 23, 2008 3:15 PM
To: Mike McLaughlin; Mark Trefry; Mike Clayton
Cc: Bill Wrigley; Bruce Fletcher
Subject: Pls attend selectmen's next meeting (Tues, 10/28) at 7:35 pm

Good afternoon, Chiefs and Superintendent.

Bill would appreciate your attendance at next Tuesday's selectmen's meeting regarding the Whitman Street oak tree. It will help the Board to have our public safety officials present to answer any questions that come up. Bruce will attend, as well, and we can expect several residents who oppose cutting down the tree to be there.

Attached is an info package from Bruce, which includes the hearing minutes, your recommendations, and some background.

Many thanks.
Susan

Susan McLaughlin
Phoebe Haberkorn
Selectmen's Office
Town of Stow
978-897-4515

10/23/2008

**TREE WARDEN'S REPORT ON PROCEEDINGS RELATIVE TO A LARGE OAK TREE AT 59
WHITMAN STREET,**

OCTOBER 16, 2008

ENCLOSED HEREIN ARE THE FOLLOWING DOCUMENTS:

1. Report on the Public Hearing for Tree Cutting
2. Fire Chief's memo to the Town Administrator, initiating the proceedings
3. Police Chief's memo in support of Fire Chief's memo
4. Memo from Tree Warden in response
5. Memo from the Superintendent of Streets
6. Memo Selectmen's office relative to Selectmen's request for a hearing
7. Public Hearing legal notice
8. Correspondence from Mr. and Mrs. Lawrence M. Stafford
9. Correspondence from H. John Kerr and Mary Brandt Kerr
10. Correspondence from Dorothy Sonnichsen
11. Excerpts from Tree Warden's opening statement at public hearing
12. Public Hearing attendance sheet

REPORT ON PUBLIC HEARING FOR TREE CUTTING AT 59 WHITMAN STREET

On Friday, October 3, 2008 a duly noticed public hearing was held by the Tree Warden, in accordance with MGL Ch. 87, Section 3, in front of 59 Whitman Street at the site of one 54-inch diameter oak tree, at the request of the Board of Selectmen. The following is a report on the events and correspondence leading up to the hearing and an overview of discussions that took place at the hearing.

On July 24, 2008 the Town Administrator received a memo (attached hereto) from the Fire Chief recommending that the town remove the tree as a result of previous motor vehicle accidents involving the tree.

On the same date, the Police Chief sent a memo (attached) to the Town Administrator in support of the Fire Chief's opinion that the tree should be removed for safety reasons.

At the request of the Town Administrator the Tree Warden sent a memo to him (attached), on July 31, 2008, explaining in general the procedures that could be followed to legally remove the tree, including the recent history relative to the widening of the road surface and the discussions about this tree by the Highway Department, and comments about this tree from residents who attended a public hearing on a nearby tree, on August 3, 2007.

On August 19, 2008 a memo (attached) on this subject was sent from the Superintendent of Streets to the Town Administrator.

On August 27, 2008 the Tree Warden received notice (attached) that the Board of Selectmen voted to request that the Tree Warden hold a public hearing on the tree at 59 Whitman Street.

During the next two weeks, the Tree Warden compiled a list of trees that the Highway Department wanted removed, in addition to the one in question on Whitman Street, for inclusion in the public hearing notice, and prepared the notice. Additionally, the Tree Warden strongly urged the Superintendent of Streets and the Highway Department Foreman to have the brush on the north side of the tree cut back so that the tree would be more visible to motorists, thereby making it safer, in his opinion.

On September 12, 2008 the public hearing notice (attached) was sent to the Stow Independent for publication two times, on September 17th and September 24th, in accordance with the law. Subsequently, the notice was attached to all the trees on the list, and also filed with the Town Clerk for posting at the Town Building.

Prior to the hearing on October 3, 2008, the Tree Warden received objections to the removal of the tree, by telephone or in person, from the following people: Apara

Borrows of 149 Randall Road, Jane and David Gumble of 160 Whitman Street, Larry Stafford of 59 Whitman Street (who also submitted a letter), Ernie Dodd of 341 Sudbury Road, and Malcolm FitzPatrick of 323 Great Road.

Prior to the hearing, three letters (attached) were received objecting to the removal of the tree, from the following people: Mr and Mrs. Lawrence M. Stafford of 59 Whitman Street; Henry John Kerr and Mary Brandt Kerr of 110 Whitman Street; and Dorothy Sonnichsen of 101 Packard Road.

Chapter 87, Section 4 states that, "Tree Wardens shall not cut down or remove or grant a permit for the cutting down or removal of a public shade tree if, at or before a public hearing as provided in the previous section, objection in writing is made by one or more persons, unless such cutting or removal or permit to cut or remove is approved by the selectmen." Therefore, Selectmen's approval to cut this tree is required in this case.

At the hearing, 11 members of the general public were in attendance as well as 2 members of the Stow Fire Department, the Superintendent of Streets, the Secretary of the Highway Department, one member of the "press", and the Tree Warden. The attendance sheet is attached hereto.

The hearing was opened by the Tree Warden at the posted time, and an opening statement (attached) was read, after which everyone was given a chance to speak. Comments expressed during the hearing include the following:

- The last person that hit the tree is still experiencing physical problems as a result of the accident.
- The road gets very narrow where the tree sits, which causes people to have to slow down and be very cautious when two cars need to pass at that point.
- There should be signs to slow people down approaching from both directions.
- Could there be speed bumps installed to slow people down?
- Trees can act as traffic calming devices.
- The last accident was caused by the narrowness of the road because two people were trying to pass, not because of speed.
- The tree presents a hazard because it makes the road too narrow.
- Because the side of the road that the tree sits on is curved around the tree, will that edge of the road be straightened if the tree is removed? The Superintendent of Streets replied in the affirmative to that question.
- Is the tree healthy? The Tree Warden replied that there is no question that there is some serious decay evident in the base of the tree but there is no way to tell how far into the core of the tree that the decay extends without boring into the tree, which could be done. But he also pointed out that many of the town's roadside oak trees are hollow inside but are otherwise still healthy and remain standing for a long time.
- The tree should be preserved, but with reflectors put on it to make it more obvious, especially at night.

Although most of the comments made at the hearing were noted, not everyone made it clear whether their comments indicated that they were in favor of removal of the tree or not. However, it was my impression that the majority of people in attendance were in favor of removal of the tree. Most of the comments were in stark contrast to the written and verbal comments that were received prior to the hearing, all of which were in opposition to the removal of the tree, other than the Fire Chief, Police Chief, and Superintendent of Streets, who are, of course, in favor of removal.

Comments expressed prior to the hearing, in opposition to removal of the tree, include the following:

- This tree and all our roadside trees are what give this town its rural character and every effort should be made to preserve them. They provide shade, wildlife habitat, scenic beauty, prevent erosion, and keep the air clean. And they drink huge amounts of water that will have to go somewhere else if the tree(s) are cut down.
- We should not cut down trees just because of poor driving behavior.
- Cutting down this tree will make people go faster and actually create more of a hazard than leaving it standing.
- This tree is a traffic-calming device.
- Reflectors should be put on the tree to make it more obvious.
- We have been travelling this road for over 50 years and never even came close to hitting that tree.
- Trees like this one are one of the reasons we choose to live in Stow.

The hearing was continued on Cross Street at the site of the other trees on the list. Rachel Belanger and I were the only two attendees of the Whitman Street portion of the hearing who traveled to Cross Street for the continuance. However, two more individuals arrived at Cross Street to express their opposition to the removal of the tree on Whitman Street. Their comments were included above.

The hearing was closed at 3:00PM.

Respectfully Submitted,

Bruce E. Fletcher
Tree Warden
Town of Stow

October 14, 2008

-----Original Message-----

From: Mike McLaughlin [mailto:FireChief@stow-ma.gov]

Sent: Thursday, July 24, 2008 3:56 PM

To: Town Administrator

Cc: Chief Trefry

Subject: Tree on Whitman Street

Bill,

On July 17th we responded to what could have been a very serious motor vehicle accident between 51 and 59 Whitman Street. The accident involved a car hitting a tree which has been struck numerous times before. As Fire Chief, I am recommending that the town proactively remove the tree as a public safety hazard.

If you require additional information, please let me know.

Thank you,

Mike

Mike McLaughlin
Stow Fire Chief
Stow Fire Department
16 Crescent Street
Stow, MA 01775
Phone: (978) 897-4537
Fax: (978) 461-1400
Cell: (978) 580-7774

-----Original Message-----

From: Mark H. Trefry [mailto:stowchief@comcast.net]

Sent: Thursday, July 24, 2008 3:29 PM

To: bill wrigley

Cc: Mark H. Trefry - Chief of Police

Subject: Public Safety issue

Mr. Wrigley,

The Fire Chief informed me that he was sending an email to you regarding a tree on Whitman Street. This tree, in his opinion is dangerous to motorists, along with a request to have this tree removed. I am sending an email in support of the Fire Chief. The tree in question is located opposite #60 Whitman Street, a large Oak tree that is too close to the paved roadway. The most recent accident happened on July 17, 2008 at 12:48 pm, a resident of Salamander Lane drove into this tree, fortunately no one was seriously injured. It is my opinion that this is a safety issue and the tree should be removed. Thank you.

Best Regards,
Mark H. Trefry

MEMORANDUM

July 31, 2008

From Bruce E. Fletcher, Tree Warden

Re: Large Oak tree in front of 59 Whitman Street

To Whom It May Concern:

This memo is being written in response to recent concerns expressed relative to the hazardous nature of a large oak tree approximately 54 inches in diameter on the west side of Whitman Street in front of #59, after the tree had been struck by a motor vehicle.

It should be noted up front that the simple occurrence of a tree being struck by a motor vehicle cannot, and should not, be the sole criteria for deciding whether or not a roadside tree is to be deemed a hazard. If this was the case, we would need to start on a wholesale clearing of all of our roadside trees. That might sound ludicrous to some, but it is in fact the expressed desire of many. It is my statutory duty as Tree Warden to protect and preserve our public shade trees.

The situation surrounding the tree in question may be considered unique, however. In July of 2006 the proposal by the Superintendent of Streets for the widening of that particular section of Whitman Street prompted a request from the Highway Department Foreman (to me as Tree Warden) to have that particular tree and two others in the same vicinity removed because the trees would prevent the newly widened road from having an even width of traveled way because the proposed berm would have to meander around the base of the trees, as I recall it.

Some discussion ensued amongst the three of us about which of the three trees absolutely had to be removed to accomplish the road work, which might be able to be preserved particularly to prevent a new problem of solar glare to southbound traffic, and which one(s) were in such bad condition anyway that they might need to be removed within the near future due to the possible falling hazard. It was determined that at least one of the trees, the smallest of the three, should be declared hazardous due to its deteriorated condition, but it was my official opinion there should be some attempt to save at least one of them for the public benefit. It is not clear to me at this time whether or not we came to some agreement on which one.

Although the Superintendent of Streets is presumed to have the authority to order the Tree Warden to have a hazardous tree removed, the proper Statutory procedure for dealing with the removal of shade trees where the purpose is to construct a wider traveled or paved surface is by holding a public hearing. Therefore, a public hearing was duly posted and held at the site on August 3, 2007, in accordance with MGL Ch. 87 s.3.

Two of the trees discussed are of similar size in the same vicinity - one south of the driveway to 59 Whitman Street and one north of it. The tree north of the driveway was posted by me, but the one prompting this memo is the one south of the driveway. Both trees were discussed at the hearing and attendees were asked their opinions on both.

The hearing was attended by Mr. Don Rising of Treaty Elm Lane, Larry and Michelle Stafford who are direct abutters living at 59 Whitman Street, plus Foreman Scott Morse and Albeo Duguay of the Highway Department, Rachel Belanger of the Highway Department documenting the proceedings, and myself.

Larry and Michelle Stafford and Don Rising all expressed opposition to the removal of either of the 54-inch oak trees that were discussed.

MGL Ch. 87 s.4 states that in the event that opposition to the removal of a public shade tree is expressed at or before a public hearing, the tree cannot be cut without permission of the Selectmen.

Taking into consideration that the Statute refers to opposition *in writing*, which didn't happen, and the tree in question was not the one officially posted, plus conditions at the site have changed by virtue of the road being resurfaced, it would therefore probably be technically acceptable under the Statute(s) for the tree in question to be declared a hazard and be removed.

However, it is my opinion that it would be a breach of the public trust to act contrary to the verbally expressed opposition to the removal of either of the two trees discussed at the hearing, without giving those persons the right to express their opinions directly to the Selectmen, before the fate of the tree is decided.

If the tree in question is declared to be a hazard by the Selectmen, or the Superintendent of Streets acting on their behalf, either before or after hearing from those persons who expressed opposition, and I am ordered to have it removed, then the tree shall be removed.

If I am requested by the Selectmen or the Superintendent of Streets to hold another public hearing for the removal of the specific tree in question, I shall do so, and if objections are heard, the decision to cut the tree will be appealed to the Selectmen for their final decision.



**Town of Stow
HIGHWAY DEPARTMENT**

88 South Acton Road
Stow, Massachusetts 01775
(978) 897-8071
FAX (978) 897-5682

**Michael Clayton
Superintendent of Streets**

**Mailing Address:
88 South Acton Road
Stow, MA 01775**

8/19/08

To: Town Administrator

Fr: Superintendent of Streets

Re: Tree at 59 Whitman Street

I'm writing this memo in response to the concerns that have been raised about the large oak tree that is along the roadside on Whitman Street in front of #59. To my knowledge, I believe this tree has been hit twice by motor vehicles over the past three years.

Bruce has given great detail in his memo dated July 31, 2008 about the recent history of this and the other trees in the area, so I will spare the details and refer to Bruce's memo as needed.

One reason behind the posting of the tree was due to the fact that the road was being resurfaced and the tree is encroaching upon the road as it grows. As a matter of fact, before the road was resurfaced, the pavement along that edge of the road was actually pushed up from the roots of the tree. As it sits now, the tree is only 1 foot away from the edge of the pavement.

When we are laying out a road for resurfacing we have to take into account several different things. Two things that are quite important are road width and road alignment. These two factors make a big difference to motorists, especially motorists that are traveling on a road that is new to them. In the case of Whitman Street by the tree in question, the width and alignment of the road are compromised because of the tree. When we were laying the road out, we wanted to keep the width of Whitman Street at 21'. This was the width of the road before it was resurfaced, except by the tree. At the location of the tree the road narrows down to 18', which is the absolute minimum width that a collector street such as Whitman Street should be. We left a 1' unpaved shoulder between the road and the tree. The minimum shoulder width should be 2', but the tree is in the way. There is also only a 1' unpaved shoulder in front of the tree just to the north of the driveway at 59 Whitman Street (the tree that was originally posted for public hearing by Bruce). The road at this tree however is 21' wide.

Another reason we had the tree posted for public hearing is for winter snowplowing. As we plow snow and the embankments along the roadside get bigger, there becomes less space to put the snow. On Whitman Street at the tree in question, it is possible that the road could narrow down to 16' or less, depending on how much snow has accumulated.

It is my opinion that the tree in question should be removed. I agree with Bruce that we should not breach the public's trust however and I believe we should post the proper tree for a public hearing. The tree is old and damaged and has served its purpose as a public shade tree over the years. Besides, it can always be replaced with a new tree, planted further off the edge of the street, obviously.

**Michael E. Clayton
Superintendent of Streets**



Town of Stow
BOARD OF SELECTMEN

Stow Town Building
380 Great Road
Stow, Massachusetts 01775
(978) 897-4515 selectmen@stow-ma.gov Fax (978) 897-4631

DATE: August 27, 2008

TO: Bruce Fletcher, Tree Warden

CC: Mike Clayton, Superintendent of Streets
Mike McLaughlin, Fire Chief
Mark Trefry, Police Chief

FROM: Susan McLaughlin, Selectmen's Office *SM*

RE: Selectmen's vote on public hearing for tree located at 59 Whitman Street tree

This memo is to inform you that on August 26, 2008 the Board of Selectmen voted to request that the Tree Warden hold a public hearing on the tree at 59 Whitman Street. Ms. Sturgis so moved; Mr. Dungan seconded; and all voted in favor.

The Board's decision followed consideration of a written recommendation from the Superintendent of Streets, dated August 19, 2008, and the Town Administrator's summary of input from the Town's Public safety officials.

Town of Stow
HIGHWAY DEPARTMENT
88 South Acton Road
Stow, MA 01775
978-897-8071
Fax 978-897-5682

NOTICE OF PUBLIC HEARING FOR TREE CUTTING

In accordance with MGL Ch. 87, a Public Hearing will be held by the Stow Tree Warden on Friday, October 3, 2008, commencing at 2:00 PM at the site of the first tree on the list below, and continuing at the locations of the subsequent trees on this list, for the purpose of hearing any objections to the cutting and/or removal of the listed trees, as requested by the Selectmen and/or Superintendent of Streets. Objections or other comments may also be submitted in writing to the Highway Department at the address shown above, prior to the hearing, but must be received by the Tree Warden prior to the close of the hearing:

1. 54" oak tree in front of 59 Whitman Street;
2. 30" oak, Cross Street opposite Pole 3;
3. 24" oak, Cross Street, with mail box 21 attached;
4. 10" ash, Cross Street, opposite driveway to #30;
5. The following trees on the east side of Cross Street from #30 Cross Street southerly to Randall Road: 6" poplar; 8" poplar; 12" maple; 24" oak; 18" oak; 4" birch; twin 4" birch; 12" oak; 6" birch; 8" birch; 8" birch; 18" oak; 10" oak.

The Tree Warden reserves the right to waive any inconsistencies in identification by size and/or species.

The Tree Warden may be contacted at 978-430-6359 with questions or comments.

Bruce E. Fletcher
Tree Warden

For publication two times, 9/17/08 and 9/24/08

Mr. and Mrs. Lawrence M. Stafford
59 Whitman Street
Stow, MA 01775

September 29, 2008

Town of Stow
Highway Department
88 South Acton Road
Stow, MA 01775

Reference: Public Hearing on 54" Oak in front of 59 Whitman Street

To Whom it May Concern,

Please be advised that we are opposed to the removal of this tree. It complements the rural nature of this town and acts as a deterrent against a growing speeding problem on Whitman Street.

Whitman Street has long been used as a cut-through road to travel between Stow and Sudbury. The morning hours see high amounts of commuter and school bus traffic. During the morning and afternoon rush hours, as well as throughout the day, commuter traffic often greatly exceeds the posted 30 MPH speed limit. Without suitable shoulders or side-walks, pedestrians need to share the winding road with the automobile traffic. The combination of pedestrian traffic, blind corners, and unchecked speeding is an accident waiting to happen.

The road has one long straight section, which runs from Birch Hill road to the intersection of Whitman Street and Gleasondale Road. The tree at 59 Whitman Street lies approximately in the middle of this straightaway and has remained the only deterrent against unbridled speeding along this stretch. Commuters are forced to slow down from their excessive speeding through this narrow stretch to avoid oncoming traffic. Should this tree be removed, there would be no check to speeders between Birch Hill and Gleasondale.

There have been two accidents at this tree over the past two years leading to questions about the safety of commuters along this area of the road. At the first accident, Mrs. Michelle Stafford was first on the scene, where the driver admitted to "reading the newspaper" while driving. Such poor driving behavior is hardly the fault of the tree. At the second accident, the out of control vehicle ended up 20 feet into the front yard of 61 Whitman street; a house with two small children who frequently play in the front yard. How much further would that car have gone if the tree had not slowed it down? The answer to public safety isn't the removal of the only deterrent to the speeding problem; it is the proper enforcement of the posted speed limit. If the speed limits were adhered to, the likelihood of accidents along this stretch would be greatly reduced.

Finally, from an environmental standpoint, a mature oak tree will drink as much as 50 gallons of water per day. Should this tree be removed, where will this water go? Will it pool in the front yards of 59 and 61 Whitman? Will it raise the water table causing costly property damage?

Lawrence and Michelle Stafford

September 29, 2008

In summary, we are opposed to the removal of this tree; it contributes to the rural nature of Stow and plays a vital role in deterring the speeders along Whitman Street. However, should my requests be overruled, I respectfully ask that all wood from this tree be left in my front yard.

Best Regards

A handwritten signature in black ink, appearing to read 'Lawrence and Michelle Stafford', with a long horizontal flourish extending to the right.

Lawrence and Michelle Stafford

Oct. 2, 2008

To Whom It May Concern:

Our family has lived on Whitman Street for 14 years. We chose this area because of the quiet, semi-rural aspect – and, as people who grew up in the wide-open western US – because of the quintessential New England stonewalls and huge trees.

We respectfully request that the tree on Whitman Street remain, because it is a majestic, old tree that graces our neighborhood and contributes to the scenic byway, and because its very presence and position serves as a ‘traffic calming’ device.

It is difficult to quantify aesthetic appeal, or the value of greenscape and trees. But many choose to live in Stow – as opposed to a more urban environment – because of those attributes. And this tree represents all that is finest about this aesthetic. Many towns have designated ‘rural’ or ‘scenic highways’ – which in fact preserve such majestic trees arching over the roadway and Stow should do likewise. This tree helps preserve the value of nearby homes as well as maintain the aesthetic appeal of the community.

The tree should also be preserved because of the functional purpose that it provides. Yes, cars do sometimes need to slow or give way slightly to oncoming traffic, and that is a good thing. The fact is, traffic routinely charges down this road well in excess of the posted speed limit. Because this tree and its position sometimes slows those onrushing cars the safety of the road is increased, both for residents who live along what has become a speedway at certain times of the day, and for people trying to use the road. Instead of ‘speed bumps’, we have this beautiful tree. It is both better looking than speed bumps, and costs the town nothing for the service it renders. The reflector on one side has served its function well – especially given the sheer volume of traffic which has safely passed it by (especially on these recent weekends when orchard traffic increases the number of cars in Stow five-fold).

It cannot be emphasized enough how much we want – and need – the speed on Whitman to be controlled. We have had pets killed, we worry about children getting off school buses, we have difficulty coming out of our own driveway and we have long since given up trying to take a leisurely walk on our neighborhood road. To the degree that this tree helps slow some of that onrushing traffic, that is a good thing. And it is important.

Allegedly the highway department wants this tree removed because someone hit it – and indeed a slight fold in one corner of the reflector is visible. But likewise, a driver recently took the corner on Gleasondale at Treaty Elm too fast and ended up on the berm. Would you move the beautiful old tree – and farmhouse – at that corner to straighten out that curve? It would certainly make the road easier to maintain and probably enable motorists to travel faster. But that, we submit, is not desirable.

Yes, to remove the tree might facilitate a straighter, faster highway. But Whitman Street, which is a small road cutting through a residential neighborhood, should be neither straight nor fast – and most certainly not a highway.

We urge that this tree be preserved.

H. John Kerr
Henry John Kerr

Mary Brandt Kerr
Mary Brandt Kerr

110 Whitman Street, Stow
(978) 897-1642

October 3, 2008
1:00 p.m.
Faxed to 978-897-5682

Town of Stow Highway Dept.
88 S. Acton Rd.
Stow, MA 01775

At: Bruce E. Fletcher,
Tree Warden

Dear Bruce,

I would like to state my opposition to the cutting of the 54" diameter oak tree in question at 59 Whitman St. Apparently, some idiot hit this tree with their car. One person's poor driving isn't the tree's fault! We need to preserve all the large hardwoods we can, for many reasons. In this case, can't we erect some sort of reflector in front of the tree for the southbound drivers to see and avoid?

As a member of the Stow Conservation Trust since it was started, and also instrumental in conserving Doty Leggett's woodland, my feelings on preserving trees are strong.

Whitman St. is a country road, and slower speeds are necessitated for them. Obviously, a driver must know where the outside of their car's fenders are when approaching another car at that point in Whitman St., as on all our side roads.

Please do everything you can to save this tree from being cut; it would be a very unfortunate decision for that to happen. Thank you for your consideration.

Sincerely,



Dorothy Sonnichsen
101 Packard Rd.
Stow, MA

Pertinent excerpts from the Opening Statement read at the Public Hearing for the oak tree at 59 Whitman, October 3, 2008:

Under the provisions of the Mass Public Shade Tree law, Chapter 87, this hearing is being held at the request of the Board of Selectmen, after they heard from the Fire Chief, and then the Police Chief and Superintendent of Streets, that they thought the tree should be removed because it constituted a hazard. The purpose of this hearing is to hear the opinions of those who would like this tree removed and those who may object to it.

The original request to remove this tree came from the Superintendent of Streets for the purpose (as I recall the purpose being described to me at the time) of widening the pavement to accommodate a berm and to provide an even width of pavement when resurfaced, and the proper procedure in such cases is to hold a public hearing.

I posted and held a public hearing at this location, but I had mistakenly described the tree as being "north" of the driveway to #59 when I should have written "south" of the driveway. At any rate, this tree was discussed at that time, and objections were heard to its removal, so the Supt of Streets chose not to pursue the matter.

Since that time, it is my understanding, that the tree has been hit twice by motorists, prompting this concern.

Since the road work has already been done, the purpose of this hearing is not to hear any opinions about whether or not the tree should come down for the purpose of widening the travelled way, but in part to hear whether or not there are still objections to its removal since this tree was not publically posted when the original objections were heard.

I feel obligated to point out here that Chapter 87 also says that the "Tree Wardens ... if ordered by the mayor, selectmen, road commissioners, or highway surveyor, shall trim or cut down trees or bushes, if the same shall be deemed to obstruct, endanger, hinder or incommode persons traveling thereon." The only one that applies here is "selectmen" since Stow has neither road commissioners nor a highway surveyor. So since the Selectmen have already heard from three town officials that the tree poses a hazard, it would be incumbent upon anyone who objects to its removal to express why they think the removal of the tree may pose just as much or more of a hazard than retaining it, or retaining it and/or performing some other means for reducing the stated hazard. Otherwise, I must assume that the Selectmen will not want to render the town liable if they fail to order the removal of the tree.

I have already received several verbal and one written opinion objecting to the removal of this tree, so this will automatically go back to the Selectmen for their final decision.

B. E. Fletcher

PUBLIC HEARING FOR ONE 54-INCH OAT TREE AT 59 WHITMAN STREET
ATTENDANCE SHEET, OCTOBER 3, 2008

<u>NAME</u>	<u>ADDRESS</u>	<u>EMAIL ADDRESS</u>
Deanne Glorioso	70 Birch Hill Rd	deeglوريوس@comcast.net
STEPHEN QUINN	67 WHITMAN ST	
WILLIAM BYRON	469 GLEASONDALE RD.	
DOROTHY SPAULDING	104 PINE POINT RD	
Laura Folsom	48 Birch Hill Road	laura.folsom@comcast.net
Inger Rhoads	375 Sudbury Rd	prhoads@comcast.net
Rachel Belanger	Stow Highway	
Michael Clayton	Supt of Streets	
MARK W GUERIN	STOW FIRE DEPT.	
GREG Vogel	Stow Fire	
Eleanor Recker	37 Robert Road Stow	
Nancy Arsenault	267 Red Acre	
Bruce Fletcher	Tree Warden	
Mary-Kathryn Quinn	67 Whitman St.	
HENRY TARBI	116 BARTON RD.	henry.tarbi@staples.co
Mary Bob Cutler	461 Gleasondale Rd (arrived during 2 nd half of hearing)	

Susan McLaughlin

From: Town Clerk [townclerk@stow-ma.gov]
Sent: Thursday, October 23, 2008 12:55 PM
To: Selectmen; Tom Ruggiero
Subject: Selectmen's meeting

Tom:

Susan:

On Tuesday, Oct. 28th, to add an agenda item. I would like the Selectmen to take a formal vote to designate Center School as the emergency location for the polls if we have to evacuate Hale on Election day and designate Pompositticut School as the secondary location if Hale and Center become unavailable.

This eliminates the need for the Selectmen to call an emergency meeting on Election Day if the need arises. Of course my goal is since we are prepared for contingency...nothing will happen.

I've cleared this with Michael Wood. Designating the schools as backup locations doesn't cause a problem because there's no school district wide on Nov. 4th.

Thanks!

Linda

* * * * *

Linda Hathaway, CMMC
Stow Town Clerk
Town Building
380 Great Road
Stow, MA 01775-2127
Tel. 978-897-4514 x 1
FAX 978-897-4534

Website: www.stow-ma.gov

When responding, please remember email is considered a public record.