

# **Executive Minutes**

## **Stow Board of Selectmen**

### **April 22, 2014**

Present at the meeting that was held at the Town Building were Gary Bernklow, Donald Hawkes, Charles Kern, Thomas Ryan and James Salvie. Amy Hastings and Ellen Sturgis were present as members of the Elementary School Building Committee.

Also present were Town Administrator, William Wrigley and Recording Secretary, Maureen Trunfio. The meeting was called to order at 9:28 PM.

Executive Session re: Elementary School Building Committee Faulty Sidewalk Discussion Ms. Sturgis reported that the town is currently "holding" \$300K relating to the Center School construction project. A Memorandum of Understanding (MOU) was entered into between Western Surety Company (Western) and the Town of Stow (Stow) that cited resolutions to issues concerning the final agreements and payments regarding the Center School construction project. The agreement states that Stow will remit to Western the lump sum amount of \$300K. As a condition to the remittance of that sum Western and Stow will exchange mutual releases a form satisfactory to each other.

Ms. Sturgis explained that the one major issue that remains is the Town's displeasure with the condition of sidewalks on the school site, following the winter months. Craig Martin, Building Inspector for the Town, has been involved in the investigation into the sidewalk problem. Both Western and Stow propose that a testing agency perform tests, at Stow's expense, on the concrete, sub base materials and sub soils below the areas where the frost heaves have occurred. The testing agency will provide the results of its report to Western and Stow. The MOU states that Stow will provide the testing reports to a geotechnical company chosen and paid for by Stow to analyze the results and to provide an opinion as to whether the sidewalks and sub base materials were installed in accordance with the contract plans and specifications. Western reserves the right to hire its own geotechnical company and pay for a similar analysis of their own.

The \$300K payment is contingent upon a satisfactory resolution of the frost heave issue. If both parties cannot agree on a resolution of this issue, both sides have agreed that there is no settlement and the current MOU will be void. The Town understands that it cannot disperse funds from the \$300K during the period of the MOU.

Ms. Sturgis explained that if the project had finished on time, the Town would go back to the contractor and request a fix. However, at this date this would be considered a warranty latent deficiency. She told the BoS that she recommended that the Town pay for the testing of core samples that may show that the base material under the concrete was not up to spec. She told the BoS that she recommends that the Town move forward with the borings at this point. It was mentioned that at this time many of the heaves has resettled. Mr. Wrigley added that the heaves affected a substantial area. He has asked Craig Martin to roughly price the repair of the area in linear footage. There is a chance that certain "panel" of the sidewalks could be repaired.

The BoS questioned what the worst case scenario would be and Ms. Sturgis stated that the base material would prove to be inadequate in which case the sidewalks would need to be jack hammered, removed and replaced properly.

Ms. Sturgis reminded the Selectmen that as a condition of the \$300K payment being made, Western would agree to dismiss the pending lawsuit with Prejudice.

Mr. Salvie moved to execute the settlement of the case of Western Surety Company v. Town of Stow, Civil Action No. 1:14-cv-10143 pursuant to the terms of the mediation MOU between the Town and Western Surety dated April 14, 2014, with the understanding that the settlement is conditional upon satisfactory resolution of the sidewalk frost heaving issues at Center School as stated in the MOU. If the terms of the proposed settlement should change based on the investigation of the cause of the frost heaves, a further proposal will be brought to the Board for a vote prior to the acceptance of the revised proposal. Mr. Ryan seconded the motion. Mr. Bernklow, aye; Mr. Hawkes, aye; Mr. Kern, aye. (5:0)

#### Teacher Salary Negotiations

It was reported that salary negotiations for the Nashoba Regional School District had progressed rapidly and a three-year agreement was reached. The terms stated that there would be a 2% increase the first year, 2.25% the second year and a 1:2 split third year.

#### Next Meeting of the Board of Selectmen

The Selectmen discussed when their next meeting should be held due to Town Election night scheduled to be held on their regular scheduled meeting night of May 13, 2014. They agreed that a meeting should be held on Wednesday, May 14, 2014.

Adjournment

Mr. Salvie made a motion to adjourn the Executive Session at 10 PM. Mr. Ryan seconded the motion and the motion carried by a unanimous roll call vote of five members present, Mr. Bernklow, aye; Mr. Hawkes, aye; Mr. Kern aye; Mr. Ryan, aye; Mr. Salvie, aye. (5:0)

Respectfully submitted,

Maureen Trunfio  
Board of Selectmen Recording Secretary