

Selectmen Present

Edwin G. Carr, Chairman
Paul Carlson
Frederick Koed
Ralph Dormitzer
Karen Quigley

Others Present:

William R. Griffin, Town Manager
Jennifer Oram, Selectman’s Clerk

Chairman Edwin G. Carr called the meeting to order at 7:00PM.

Town Manager’s Report

Town Manager, William Griffin, reviewed the Board’s updated meeting schedule. He also reminded the Board and the community of the upcoming Open Meeting Law seminar being held in Town Hall on Thursday, September 18th at 7PM. Mr. Griffin then asked the Board to review a letter he drafted to the MBTA addressing the issue of trains idling for long periods of time behind residences on North Main Street. **Selectman Ralph Dormitzer moved that the Board approve and sign the letter dated to Mr. Jones of the MBTA. Selectman Paul Carlson seconded the motion and the vote was unanimous (5-0).**

Selectmen Comment Period

Selectman Dormitzer reminded the Board and community that ‘Cohasset Day’ will be held on Saturday, September 20, 2008. He wished the event and its organizers great success.

Treat’s Pond / Sandy Cove Access

Selectman Dormitzer recused himself and moved to a seat in the audience. Chairman Edwin G. Carr reviewed the background of the situation. An outfall pipe located at Sandy Cove Beach has been routinely serviced by the Town for more than thirty years. The Town has gained access to the pipe via Lothrop Lane. The residents of Lothrop Lane have asked the Town to stop accessing the pipe via this route, and have asked that the Town instead access it via the existing Bigelow Easement that runs along Treat’s Pond. Chairman Carr stated that he feels the Board needs to look at the options and make a decision on how it will service the pipe. Chairman Carr then asked Town Counsel, Attorney Lou Ross, to review what options he feels the Town has. Attorney Ross stated that he feels the intent of the Bigelow Easement was to give access to the Town to maintain the pipe. However, how the Town is to gain access to the pipe with this easement, he feels is still unclear. He stated that he feels the Town will need to work with all of the parties involved to make the easement an “effective instrument”. In the event that a compromise with the residents does not look likely, the Town would then need to decide if it wishes to take other legal action. If it does, the Board then has the right to go into Executive Session to discuss legal strategies. Chairman Carr asked Attorney Ross what part of the Bigelow Easement seemed unclear. Attorney Ross stated that when the Bigelow property was subdivided, it went to Land Court and the easement was not recorded. He explained that prior to the subdivision, the easement affected all of the properties. Attorney Ross explained that if the Land Court made an error when recording the subdivision, the Town could file a lawsuit against the court and if it is proven that an error did occur, the Town would receive a monetary settlement; it would not mean that the easement could now be enforced. Chairman Carr then asked what the Town would need to do to continue accessing the pipe

via Lothrop Lane. Attorney Ross explained that the Town would need to, by a Town Meeting vote, make Lothrop Lane a public way. The Town could then maintain its access by receiving the Lane as a gift, purchasing it or taking it by eminent domain. Chairman Carr asked if Attorney Ross felt that the taking, in any form, of Lothrop Lane would be reasonable. Attorney Ross stated that where it is a public safety issue, and where there are flooding concerns, he did feel this would be a reasonable route for the Town to take.

Chairman Carr then read aloud a letter from the following residents: Eli Manchester, 83 Atlantic Avenue, John M. Connolly, M.D. and Kathleen V. Connolly, M.D. of 85 Atlantic Avenue and Neal F. Flannegan of 87 Atlantic Avenue. Chairman Carr added that the residents of 79 and 81 Atlantic Avenue did not sign the letter and were not in attendance of this meeting. The letter opposes the Town accessing and maintaining the pipe via the Bigelow Easement.

Chairman Carr asked Attorney Ross what he felt the cost would be to enforce the Bigelow Easement. Attorney Ross felt that where it was purely a matter of law, the cost to the Town would be minimal. The Town would have to pay to have the property surveyed and he feels that the Town would have the right to survey the property.

Chairman Carr then addressed the letter he read earlier. He stated that the letter indicated that these residents would not be willing to work with the Town. Dr Connolly of 85 Atlantic stated that this was not the case and that he had no objection to the Town maintaining the pipe. Chairman Carr asked if Mr. Connolly felt a reasonable solution could be made that would allow the Town to enforce an easement it feels it has the right to. Mr. Connolly stated that he feels the Town does have the right to maintain the pipe and the drainage ditch. He feels that the Town should continue to access it via Lothrop Lane. Chairman Carr said that the Town does not have an easement on Lothrop Lane. Chairman Carr then asked Mr. Manchester of 83 Atlantic Avenue if he would like to work with the Town. Mr. Manchester stated that he feels the real problem is the stormwater problems in the area of Atlantic Avenue. He stated that he knew about the ditch and the pipe when he purchased his property. He said that he felt it was ridiculous that so much time was being spent on how the bulldozer can get to the pipe when there are larger stormwater issues.

Selectwoman Karen Quigley stated that she feels the Town has an easement and that the Town should exercise its right to use it. She added that the people of Lothrop Lane have worked with the Town for many years, but they feel that damage is occurring to their properties and to the beach. For them to ask the Town to access the pipe via its existing easement, she stated, does not seem to be an unreasonable request. She feels it would be a bad precedent set by the Town if it does not use its right. Selectwoman Quigley also reiterated that according to the Bigelow Easement the easement 'runs with the land' and even if there were a recording error, the Bigelow Easement takes precedent.

Mrs. Genevra Higginson of 159 Atlantic Avenue asked to address the Board to clarify a couple of statements made previously. She stated that the residents of Lothrop Lane paid to pave the road, and that the Town maintains it for fire safety purposes. She said that the gate on Lothrop Lane was put there by land owners and was done so to stop vehicles from driving on the beach. She added that a common misconception is that it is a shorter distance to access the pipe from Lothrop Lane than it would be from the Town's easement. She said this is not true, to access the pipe from Lothrop Lane, the bulldozer needs to drive over 238 yards of beach. From the other side, it is only 18 yards. Mrs. Higginson said that she agreed with Mr. Manchester that the real issue is the stormwater.

Mr. Connolly addressed the Board again. He stated that he too felt the stormwater issues were more important and that it is a shame that they are continuing to bicker about access. He feels however, that the Town has a 30 year right of way via Lothrop Lane. He said that he has many reasons for not wanting people to access the easement as they then come down on his property and the beach. He has had jeeps riding on the beach, people trespassing and walking their dogs unleashed etc. That is why he installed the gate. He stated that the Bigelow easement is covered under a foot of water in the winter, and the Town would not be able to access the pipe in an emergency. Selectman Koed stated that the Board is not asking him to let just anyone down the easement, just the Town. Selectman Koed stated that the residents of Lothrop Lane have been gracious, but the Town does not have a right of way. He said that the Town was hoping Mr. Connolly would agree to occasional access by the Town.

Mr. Ralph Dormitzer of 111 Atlantic Avenue stated that to access the easement would be difficult due to the elevations. He said that it is a summer v. winter situation and that the Board needs to consider the realities. Selectman Carlson asked if the easement was referred to in the Sandy Cove Association agreement. Selectman Dormitzer stated that only the walking path easement is referred to.

Letitia Jordan of 47 Lothrop Lane stated that she did not believe the Town had been accessing the pipe via Lothrop Lane for 30 years. She said she remembers it being accessed from the other side. She stated that with the Town accessing the beach through Lothrop Lane, it has widened what was once a walking path, making it wider and now the ocean comes up the lane. She is concerned about this.

Mr. Michael Russell of 105 Atlantic Avenue stated that he has lived in Town since the 1970s and he remembers the residents going down with shovels and cleaning out the pipe on their own, without the help of the Town. He suggests that the Town access the pipe via Lothrop Lane in the winter months, and during the summer, access via the Town's easement.

Mr. Peter Whittemore of 47 Elm Court, and a land owner at Sandy Cove Beach then addressed the Board. He stated that Sandy Cove is private property and even though a road may be a public way, it does not mean that he can go on people's lawns. He stated that the Town needs to use the easement and that he feels the Town should move forward with obtaining access.

Chairman Carr moved to go into Executive Session for the purposes of discussing collective bargaining. The Board will only come out of Executive Session so that Selectman Dormitzer can excuse himself for the second Executive Session. Chairman Carr moved that the Board then go into a second Executive Session for the purposes of discussing litigation strategies for the acquisition of property. The Board will only come out of Executive Session for the purposes of adjourning the meeting. Selectman Carlson seconded the motion and the vote was unanimous (5-0).

**Selectman Koed – Aye
Selectman Dormitzer – Aye
Selectman Carlson - Aye
Selectwoman Quigley – Aye
Chairman Carr – Aye**

Meeting adjourned at 10PM.
Respectfully submitted,
Edwin G Carr
Chairman