



Select Board

21 State Line Road PO Box 525 West Stockbridge, Mass.
01266-0525

Tel. (413) 232-0300 x319

Fax. (413) 232-7195

E-mail: admin@weststockbridge-ma.gov

Select Board Meeting Minutes Meeting via Zoom May 24, 2021

Open Meeting

Quorum present: Eric Shimelonis, Select Board Chair, Roger Kavanagh and Kathleen Keresey, Select Board Members, and Marie Ryan, Town Administrator.

Others in Attendance: Curt Wilton, Director of Public Works and Marc Portieri, Police Chief

Eric called the meeting to order at 6:00 PM and identified the Board Members present remotely as follows: Eric Shimelonis, Kathleen Keresey and Roger Kavanagh

Roger made a motion to approve the minutes from the April 12, 2021 and to approve the April 26 and May 11 minutes at the next meeting, seconded by Kathleen.

Roll call vote:

Eric, Yes Roger, Yes Kathleen, Yes
Motion Passed.

Town Administrator Update:

Marie told the Board that as of the June 15th end of the State of Emergency date, the public meetings will need to return to in person meetings. She explained that the Legislature is currently reviewing this and most likely will extend remote meetings. Marie will keep the Board updated on this.

The Town will hold a Special Town Meeting on Wednesday, June 23rd at 6 PM to transfer money to pay for yearend bills and repairs for the Waste Water Treatment Plant.

Appointment of Part Time Police Officers: Police Chief Marc Portieri

Chief Portieri asked the Board to approve the appointment of two new part time police officers: Lauren Nelson and Curt Wilton. They recently graduated from the Part Time Police Academy and will be an excellent addition to the force. Chief Portieri told the Board there will be no additional cost to the Town and it will allow him more officers to fill needed shifts.

Eric made a motion to appoint Lauren Nelson and Curt Wilton as Part Time Police Officers, seconded by Kathleen.

Roll call vote:

Roger, Yes Kathleen, Yes Eric, Yes
Motion Passed.

Chief Portieri then gave the Board a quick update on Police Department activity. The police issued 48 speeding tickets, had 5 motor vehicle accidents and 6 domestic calls in May. All officers are continuing with their training of the required 80 hours. Officer Michael Renton has been approved a waiver to work fulltime until he begins the Full Time Police Academy in the fall. The police have given a few parking tickets at the Post Office parking lot. Marc stated there are parking signs there and usually the Post Office employees also put up a barrier which they have not done yet this year. He will speak to them about doing that again this year.

Letter to the Local Yoke:

Eric explained that the Board is working on a letter to be published in the Local Yoke to provide information regarding the false assumption by some residents that the 2021 Annual Town Meeting was not legal. Roger created a draft letter which Eric and Kathleen both agreed to use. Roger asked to make a few minor revisions to the letter and he will present it to the Board for final approval at the next meeting before forwarding on to the Local Yoke.

One Day Liquor License: Jeff Palfini

Jeff Palfini from the Boondock Film Society is requesting to have a One Day Liquor License at TurnPark for a film Society event on June 23rd. He will be having a food truck, cocktails and a DJ who will spin records on old phonographs. He also applied for an Entertainment License which the Board will approve at the next meeting. Eric and the Board didn't see any issues with the event but would like to vote on the whole package (Liquor License and Entertainment License) all together at the next meeting. Jeff agreed and will return at the next meeting.

At this point Eric moved up the last agenda item at this time.

Establishment of a Welcome Program for New Residents:

Eric said that a while back, the Vision Committee had an idea to have a Welcome Program to introduce the available Town services, give contact information and what type of local businesses we have in the Town to new residents.

Joe Roy stated that at the most recent Vision Committee meeting, they discussed this idea, and added that they believe this type of program is also good for current residents.

Eric introduced Joseph Grochmal, a resident of Great Barrington who helped create such a program in Great Barrington. He said that Joe would be a great asset to assist West Stockbridge in creating its own program. Eric asked Joe Roy to work with Joe Grochmal on getting this project started. He agreed.

Harris Street Extension:

Eric gave an introduction about the history of Harris Street and the Harris Street bridge, which was changed from a vehicle bridge to a pedestrian bridge over 20 years ago. He said that the Master Plan Committee, on which he serves as the Select Board representative, has been discussing the possibility of developing a Harris Street extension which would allow traffic to flow from Moscow Road to Harris Street. He shared his screen to show a map of the area and pointed out where the Harris Street extension could be built. He noted that he had discussed this idea with Curt Wilton, Director of Public Works, and he asked Curt to speak about it.

Curt spoke about the history of that area of downtown. He stated that when the Town changed the Harris Street vehicle bridge to a pedestrian walkway, it was believed that the Town owned the land from Center Street to Harris Street, now known as Merritt Way, but it did not. This created a land locked area for private property owned by the Nguyen family, where their home and businesses are located. He agreed that creating a Harris Street extension is a good idea, especially now that the Town is almost complete in their purchase of land on Moscow Road. He added that this does not, however, help with the immediate issue of access to the Orient Express property when Merritt Way will be closed during events at the Foundry. Curt said the future for access will be by Moscow Road.

Eric then asked Planning Board Chair, Dana Bixby to speak on this. Dana was in agreement about creating the Harris Street extension. She said that restoring the flow of traffic in this part of downtown is part of what will be proposed in the Master Plan and added that she would also like to see the Town acquire Merritt Way.

Eric then made the following motion:

I make a motion that we instruct Curt Wilton and the DPW, in consultation with the Planning Board and other Town boards, to begin, and to make a top priority, the Harris Street extension project and to bring it to completion as soon as possible.

An audience member (Abby Pratt) interrupted the meeting saying that she objected to the process because the Board shouldn't be voting on this motion without public comment. Eric politely disagreed and asked Curt to speak about the Harris Street extension.. Curt asked Eric to first recognize Dana Bixby, who had raised her hand.

Dana said that she saw this as a motion to create the authority to do a feasibility study, to find out if it's possible to cut this road through there, i.e., can the engineering be done, can the grading be done, will it work. She said the Town needs information from a Professional Engineer on those issues.

Eric repeated the motion at the request of Abby Pratt and clarified that completion could mean that if the project is not feasible then it would be complete, adding that if it is feasible, it would still have to go through public hearings and a town vote to appropriate the funds.

Abby Pratt asked Eric if he could put the word feasibility near the beginning of the motion. Eric asked Kathleen and Roger if they wanted to modify his motion or 2nd it.

Roger asked if Marie would first answer the process issue raised by Abby Pratt before the motion is seconded. Marie said that the public comment was not supposed to have happened, that Eric had been interrupted. She said the process is: first the motion gets made and gets seconded, and then there can be discussion, among the Board first and then it can be opened up to the public, if the Board chooses to ask for public comment.

Kathleen said she thought it would be prudent to insert the word “feasibility” into the motion.

Eric restated the motion as follows: I make a motion that we instruct Curt Wilton and the DPW, in consultation with other town boards, to begin and to make a top priority the Harris Street extension project, beginning with a feasibility study. Kathleen seconded.

Eric called for Board discussion.

Roger said he was uncomfortable with the motion because he knew the feasibility study was not funded in the FY22 budget. He suggested the motion be changed to authorize Curt to only get competitive estimates for the cost of the feasibility study and bring those back to the Board for discussion about next steps.

Eric asked Kathleen which version of the motion she preferred and she said she is comfortable with Roger’s suggestion. Eric asked Roger to rephrase the motion.

Roger said:

I make a motion to ask Curt Wilton, Director of Public works, to seek competitive bids to do a feasibility study for a project that could be called the Harris Street extension. Kathleen seconded.

To clear the way for a vote on this motion Eric rescinded his original motion. Before calling for a roll call vote, Eric asked if anyone in the audience wished to speak about the Town committing to a feasibility study for a long-term solution to a land-locked street.

Joe Roy said the town needs to fix the situation it created by cutting off the Nguyen’s vehicular right of way to their property and that going forward with a plan to fix that is not optional.

A roll call vote was taken.

Roger, Yes Kathleen, Yes Eric, Yes
Motion Passed.

Harris Street Access During Summer Events:

Eric then read a statement recapping the events leading up to the current situation and the issues to be addressed next in the meeting.

He said the Foundry submitted plans for Summer 2021 programming to the Select Board in March, He said that although the Foundry made it clear at Select Board meetings where the summer program was reviewed that it had done its best to coordinate with surrounding businesses, in recent weeks the collaboration has broken down.

He said the Foundry feels it needs to operate safely outdoors and to fully capitalize on its property for these 8 hours a week to survive and that Truc’s Orient Express feels that access across the Foundry’s property is its right and the closing of Merritt Way for 8 hours a week is an undue hardship. He said that puts the Board in a difficult situation, as we wholeheartedly support both businesses and do not want to have to choose one business over the other, or to have a detrimental effect of any kind.

He noted that Board members have proposed a number of solutions to try to settle the dispute and that none have been accepted, so the Board asked Town Counsel to provide guidance on the situation. Town Counsel has searched for documents related to the Harris Street addresses and found nothing that could be considered an official easement related to Merritt Way. Eric concluded his statement saying that Town Counsel advised the Select Board to consider the full property at #2 Harris street as private property, that the dispute about access to the Nguyen property is a private property dispute and the Board is advised against inserting itself into the dispute, especially since the temporary closure relates to safety protocols for an outdoor event and if the Town were to insert itself into the dispute that the Foundry's liability for that property would transfer to the Town.

Eric asked if the Select Board wanted to comment on Town Counsel's advice. Roger said yes and asked to read a statement in which he said:

The Foundry planned its summer schedule as all outdoor events due to pandemic restrictions that precluded using its indoor facility. The plan outlined in its presentation to the Selectboard stated events would be for up to 100 people, ~ 50 seated in front of the new stage on the west side of the Foundry building and ~50 people seated on the green. Food and drink would be available following Covid guidelines. Start time would be 7pm and end time between 9-9:30.

At the 4/12/21 Selectboard meeting Amy introduced her food service plan, informing the Selectboard that she would be closing access to Harris Street. She presented that information in good faith, believing she had an agreement with Truc.

I believe that the Selectboard failed in its responsibility to ensure that both parties to this verbal agreement understood the implications of the access road being closed from 5pm to 9:30 pm every Friday and Saturday evening for several summer months. Apparently, the implications of the road closure were not fully understood by both parties which is why the Board is now engaged in a discussion of the access road closure.

The question on the table, from my point of view is: can a property owner, whose property includes a road that has been used for 40+ years as the only access road to abutting properties, a road that has been maintained, plowed and improved by the town, choose to close that road and isolate the abutting property owners who operate a restaurant and live there? That's a complicated question, with no immediate answer.

Short of a compromise that meets the immediate need of both parties, there is an expectation that the Board will take some action to resolve the issue. I believe the Board has only one option – to mandate in the short term that the access road be kept open at all times, until some other options can be defined and agreed upon.

Kathleen said that she could understand and appreciate Roger's sentiments and certainly would like to see a viable solution for all, but that Town Counsel has informed the Board that it cannot insert itself into the process.

Andy Potter suggested that the Board should revoke the Foundry's entertainment license. Roger said the entertainment license was not the issue at hand since it is a requirement for the Foundry to operate its business, indoors or outdoors. He said the issue that needs to be addressed and resolved is the temporary closure of Merritt Way during the Foundry's events.

Ronni Tonini suggested that Orient Express customers could park on Main Street and walk to the restaurant like they have to in neighboring towns. This led to an exchange of ideas, pro and con, among audience member about the feasibility and practicality of this suggestion. Truc ended the discussion by saying that this was not an option she would consider, for health, staffing and operational reasons, reminding the Board and the audience that Truc's Orient Express is her family's business and

she is the only person who will decide when and how she will open and operate the business.

Truc reiterated the point that after Amy announced on April 12 that she would be closing the access road during Foundry events, no one on the Board had checked with her to ensure that she knew of and agreed with that plan (a fact that the Board had already acknowledged as a failure on its part).

Amy said that her understanding when spoke to Truc in March was that Truc was not opening for indoor dining. She said she did not go the Board with her plan until she talked to Truc and was told she was going to continue pop up take out. She added that she offered to make signs & pay for them, that she has paid staff at the top of the drive to tell people where to detour if they don't know they have to detour to go pick up food.

Eric proposed that if the audience and the Board could spend the next 20 minutes talking about ways to make this work instead of butting heads we could start putting ideas forward that will work for both parties.

Sharon Vidal said that 45 years ago Merritt Way was a road, that the Town has a right of way and we should just take the road.

Mark Webber said there are too many components to this issue to call this a neighbor dispute and asked why we can't revisit the entertainment license. He said that the entertainment license was issued on the premise of Covid and suggested the Foundry should be told to move back inside.

Amy said she is not closing the road that she owns, that she has no intention of closing down the road and that she is not moving 100 people inside yet, which would be irresponsible to her staff. She said that she is offering, as a solution, to pay for runners to take the food over the bridge for Truc's customers who are not able to make the walk from Main Street.

Kathleen said that we can't make presumptions about how anyone feels about their health in the midst of a global pandemic and there is no directive that business owners who are operating outdoors have to move back inside.

Any Potter said that when outdoor operations negatively impacts another business and the Selectboard takes no action to deal with that negative impact then the Selectboard is acting as the arbiters of who wins or who loses in this town, a role that no one wants from the Selectboard.

Frank Landsberger suggested that the Town look into the concept of adverse possession to establish Merritt Way as a Town right of way. He added that the primary question is who is the owner of that road, noting that the Nguyens have had constructive use of the road for decades.

Eric said that adverse possession is not a solution he could support, that he didn't want the Board to start taking private property from property owners, adding that the court process of gaining a right of way through adverse possession could take longer than building the Harris Street extension.

Roger asked what happened to the option that was suggested at one point to leave the road open until 6:30 - 6:45 PM.

Amy explained that at 6:30 – 6:45 her patrons would be in the road, picking up tickets at the box office and lining up to get their meals at the food truck, so leaving the road open would be a safety concern for her staff and patrons, and a liability issue for the Foundry.

In response to statements made by Lori Rose regarding Amy's rights of ownership of the Foundry property, Mitch Greenwald said that property ownership is not as straightforward as Lori stated, that there are different people with different kinds of rights in property and with an area like this, that's been used in a mixed way for a long time, those differing rights need to be addressed.

Eric said the Town is taking action to deal with the problem by proposing the extension of Harris Street. He noted that Curt believes it is feasible and not super expensive. He then restated his position that building the Harris Street extension would be his preferred option, because it is a more equitable solution than adverse possession, which will probably take just as much time to process through the courts.

Dana Bixby said that, in her opinion, the Town should build the Harris Street extension and acquire Merritt Way to complete the grid in the Town and make the traffic pattern much better. She stated that she doesn't see this as an either / or choice, she believes both steps should be taken.

Eric said that he wanted to bring the discussion back to the Board, stating that no one on the Board has ever dealt with a situation like this before and we are trying, in good faith, to address the long term issue created by the Harris Street bridge closure while the property owners work on potential solutions to access issues during Foundry events.

Kathleen said that she wished a resolution to the property owners dispute had been worked out in this meeting and hoped that both parties will continue to work together to find a solution that they can live with near term while the Town explores a long term solution to the Harris street closure.

Roger said he was also disappointed that we were leaving this meeting with the same issue we had when we came into the meeting. He reiterated his position that the closure of the Harris Street bridge without providing a permanent right of way between Harris Street to Center Street is at the core of the current issue and is something the Town needs to fix now.

Eric made a motion to adjourn at 9:02 PM, Kathleen seconded.
Roll call vote:

Eric, Yes Roger, Yes Kathleen, Yes
Motion Passed.

Meeting adjourned.

Respectfully submitted,

Marie Y. Ryan
Town Administrator

Documents:
One Day Liquor License Application – Jeff Palfini