

TOWN OF ACTON SELECTMEN'S MEETING
December 1, 2021
6:00pm

1. CALL MEETING TO ORDER / PLEDGE OF ALLEGIANCE

2. TOWN ADMINISTRATOR WEEKLY UPDATE

IWORQ – The Code Office under the guidance of a former employee Michael purchased IWORQ's and it has not been used since. Jason Sevigny and the Land Use Secretary are now being trained to use that program. The initial program costs have already been paid; only the yearly maintenance fee remains. It has a lot of good features and is expected to help assist that department moving forward.

Alarm trouble – The Town offices have been experiencing alarm issues over the last two weeks. The alarm company came out today and took care of a pull station which was issuing a trouble signal. Hopefully there will be no more 3 am calls indicating a problem.

Lawn Care – The Board was given the lawn care proposal for review and to determine if they wanted to go back out to bid or not. The proposal stands the same as former years in terms of costs. The last time this was put out to bid was in 2018 and was a 3-year contract. The Board decided to remain with the current contractor and to be fair go year to year on terms; the Town Administrator asked for it to be based on a calendar year to incorporate fall work. The Board agreed. Item for motion will be placed on the agenda under old business.

A meeting with the York County Sheriff's Department has finally been agreed upon and is posted for tomorrow (December 10, 2021) at 2 pm. Since it is a public contract document and the Town doesn't have to deal with any negotiation; the meeting can be open to the public.

The Town Administrator received an email from Tom Gore indicating that Candidates Night has been moved to the Acton Middle School.

The Rec. Department is now receiving Basketball and Cheerleading sign-ups. Please feel free to drop forms at the Town Hall.

The Rec. Department further announced that the tree lighting will be held this upcoming Saturday (December 12, 2021) at 5:30 pm.

The Maine Emergency Management System licenses for Ground Ambulance Service and the Ambulance's Vehicle License have been renewed for the Acton Fire Department for another year.

The Town has received a Permit-by-Rule public notice for accepting, recycling and processing wood waste from Seth McCoy's Trucking & Excavation; there are 10 days allowed for public comment. The CEO looked into the file and it looks like they will need to come before the Planning Board for a few conditional use items; the State has been notified that it is pending Planning Board; the Town Administrator believed it was on the Planning Board's agenda for the next evening.

Expense Summary reports were handed to the Board printed from the Treasurer to review. The expenses, looking at the percentages should fall near 50% as we are half way through the budget season. Discussion ensued about amounts spent. The Board will reach out to the Treasurer if they have further questions.

The Alarm went off and the Town Administrator went and dealt with it. Upon return, the Town Administrator asked which of the Board members wanted to become a backup call person for the alarm company now that Ed Walsh is no longer a Selectmen and was designated as such. Selectmen David Winchell agreed to become the back up call person.

Thank you to the wonderful Acton residents who are always willing to jump in to help and give. The Neighbor Helping Neighbor tree is up and ready to be picked from. This year the Town has adopted eight Children and 8 Seniors. Please check out the wall and select tags to help out.

3. WARRANTS/BILLS - Signed

4. APPROVAL OF AGENDA

A motion was made by Selectmen Kimberly Stacey–Horn to approve the agenda with the addition of Lawn Care under Old Business; seconded by Selectmen David Winchell Jr. No discussion. All in favor.

5. MINUTES OF LAST MEETING - Tabled

6. DEPARTMENT HEAD / COMMITTEE CHAIR UPDATES – None

7. OLD BUSINESS

A. Salt Bids -

The Town Administrator reminded the Board that last week they discussed the COG and where the bids stood. Marianne of Southern Maine Regional Planning asked for one more week to try and get the Town the best price; however, worse case, the Town still has the Granite State price of \$63.23. This is about \$10.00 per ton more than anything in the COG but because the tonnage was not put in on time, they are asking for one more week to work on it. When asked the Road Commissioners indicated they were going to need some but could wait another week. Something will have to be signed for next week.

B. Lawn Care –

Mr. Robin Ham will be asked to provide a formal copy of his proposal for the 2021/2022 year. A motion was made by Selectmen Kimberly Stacey–Horn to award the 1-year lawn care contract to Ham’s Property Service for \$4,700; seconded by Selectmen David Winchell Jr. No discussion. All in favor.

8. NEW BUSINESS:

A. Freedom of Information request –

Mr. Jeff Donahue - Requested the following through Freedom of Information requests:

The deed of the Town owned property located on Covewood Drive M/L 144-009. When the Town Administrator did the research for this request in Trio it wasn't there. A call was made to O'Donnell and Associates and they indicated that there was an easement over that property but wasn't sure if it was actually owned by the Town and recommended a legal opinion be sought out. Attorney Lenkowski was asked to look in to it. The Town Administrator read aloud Mr. Lenkowski response as it may require further action from the Board.

Mr. Lenknowski concluded that the Town of Acton did not own; a public easement deed was found to

be recorded from Albert Lavalley in September of 1998 at the registry of deeds. The deed grants to the Town for the public use of 13th Street and Covewood Drive from 109 to the easterly side of Mousam. Mr. Lenkowski further commented that the 60-acre parcel that included Covewood development was acquired by Lavalley from Rosenfield in the 60's which Mr. Lavalley conveyed the remainder of the Rosenfield parcel to Robert Lavalley Incorporated. He also stated he was aware from a prior unrelated title search that Lavalley Incorporated became ARL Timberland Incorporated. The records were searched under all names from the date of acquisition and Mr. Lenkowski did not find any instruments by which the Town of Acton could have acquired the fee in the Covewood or Shoreland area located on map 144. In short, the Town has easement rights on Covewood, which Mr. Lenkowski understood was accepted as a town way. However, the fee interest in Map 144 Lot 009 would have remained with Arthur Kelly then Timberlands. The records of the Maine Secretary of the State indicate that Timberlands has been dissolved. Again, based on prior unrelated title work, Mr. Lenkowski believes that ARL Timberlands disposed of all of its real estate holdings prior to dissolution. Further research would be required to attempt to locate the current owner.

In talking with Mr. Lenkowski on the telephone, the Town Administrator stated that it sounded like the land was moved around from a few different parties and this piece was left over. Mr. Lenkowski believes he might know who the owner would be but that it would be taxing somebody to do.

Selectmen David Winchell Jr. asked who was being taxed. The Town Administrator responded that the Town of Acton was listed as the current owners and that the Board should want Mr. Lenkowski to continue the search.

Discussion ensued regarding the easements labeling and depiction. The Town Administrator will contact Mr. Lenkowski and let him know. Mr. Donahue was given a copy of the legal opinion.

A copy of the file marked Tattle Street and a number of the pages contained therein that I reviewed at the Town Hall previously. The Town Administrator noted it was pretty extensive as Mr. Donahue came in and the Town was able to resolve this request and give him copies of what he was looking for.

A copy of the Selectmen's statement read by the Town Administrator after the Executive Session on November 15, 2021. This was regarding the Transfer Station on the 20th and this request has been completed.

The tax rate for the years 2004 through 2011 and the lawyer's fees and a list of lawyers paid in the year 2010 and 2011. Those seven years of tax rates and fees have been sent to Mr. Donahue.

The legal opinion from Town lawyers as stated in the meeting minutes of December 9, 2020.

The answer to the following questions: The Town Administrator was seeking assistance on how to answer these.

How much does it cost the Town to maintain 13th Street in the winter? Plowing, sanding, etc.

How much does it cost the Town to leave 7th Street, drive through Shapleigh to get to Lebanon Road to plow, sand, etc.?

The Town Administrator asked if the Road Commissioners could help figure this out so that the questions could be answered properly. Discussion ensued on how to figure this out. Selectmen David Winchell Jr. concluded it was almost impossible to figure out as there were too many changing variables. The Town Administrator will contact the requester to discuss.

The legal opinion from MMA as stated in the meeting minutes of December 9, 2020.

Tapes were reviewed by the Town Administrator and copies of screen shots were sent to the requestor; the calls with MMA were usually regarding COVID; there were no emails as MMA generally responds via telephone.

The MMA opinion stated in the Selectmen's statement letter read aloud on November 15, 2021 stating that the MMA opinion is that the Town could vote on an ordinance that superseded the state rule of 30 MRSA 2606. This was regarding the Transfer Station statement read aloud that indicated that the Board could, if they so chose could go to the voters and ask them for an ordinance to supersede to allow that position to stand. This opinion was the same opinion for all three lawyers but was provided verbally. Requester was notified.

B. North Star –

The Town Administrator presented to the Board a letter of agreement received from North Star regarding Planning Services to the Planning Board and Land Use Department. With the Planning Board starting to look at ordinances, the CEO is interested in retaining these services. The Town Administrator reviewed the contract – there was one typo in the Planning Board meeting times and the area of compensation was the only area that changed that she saw; everything went up \$10.00. Their Principal Planner and their Associate Planner went up \$10.00 each and travel time is billable at one-half normal billing rates plus mileage reimbursement and IRS rates and it is approximately one hour and fifteen minutes and sixty miles. The CEO knows he uses them at his discretion and as needed. The Board is being asked to sign although there is a typo but if the Board can verbally give permission to approve those rates, a contract can be provided next week to sign and the Planning Board can use those services tomorrow night as the Planner is scheduled to meet with them then.

A motion was made by Selectmen Kimberly Stacey–Horn to accept the North Star contract with the typo changes effective immediately through June 30, 2022; seconded by Selectmen David Winchell Jr. No discussion. All in favor.

C. Saco River Commission Appointment

This appointment is for Mr. Crespi to be reappointed. The delaying issue was that Mr. Crespi is not an Acton resident. The Saco River Commission looked into his ability to take on this appointment and found no conflict. The Board agreed to appoint.

A motion was made by Selectmen Kimberly Stacey–Horn pursuant to Title 30-A M.R.S.A. 2602 to appoint Mr. Charles Crespi of Marblehead, Massachusetts as a Saco River Corridor Commissioner

Regular Member effective until November 1, 2024; seconded by Selectmen David Winchell Jr. No discussion. All in favor.

D. Executive Session pursuant to 405 6 A.1

A motion was made by Selectmen Kimberly Stacey-Horn to go into executive session pursuant of 401 6 A 1 – personnel issue; seconded by Selectmen David Winchell Jr. No discussion. All in favor.

A motion was made by Selectmen Kimberly Stacey–Horn to come out of executive session pursuant of 401 6 A at 7:16 pm; seconded by Selectmen David Winchell Jr. No discussion. All in favor.

No decisions have been made. Session was regarding T/S Superintendent position. The Board has chosen to run another week and continue to review the applications on file. Waiting on a third Selectmen to help make the decision.

9. PUBLIC COMMENT

Mr. Jeff Donahue approached the Board to set the record on a few items:

Mr. Donahue reviewed the warrants from 2004 through 2009 and couldn't find any more in the 2006 article where it was voted down to stop maintaining private roads.

The MMA opinion from December 9, 2020 – that was for him because he made a stink about you people. The Town, the Selectmen making an emergency ordinance without taking it to the legislative body (discussing mask mandate here). Mr. Donahue commented that he would think that if the Board based their opinion on something like the lawyer's opinion the Board was defending their position from a lawyer's opinion; he further noted the Board should have something more. If the Board did not have anything in writing, then that is hearsay. Selectmen David Winchell Jr. asked Mr. Donahue what was hearsay. Mr. Donahue responded, the lawyer's opinion. Selectmen David Winchell Jr. asked, the mandate? You are talking about what the State Governor Mills mandated? Mr. Donahue indicated he was talking about the lawyer's opinion that the Board did not have a record of is hearsay. Mr. Donahue continued on this topic and discussions got accusatory and heated. The Town Administrator tried to catch the Board up. Regarding the mandate, the Governor puts the orders in that the Select Board was required to follow. Maine Municipal was called to find out if in fact these had to be followed or if the extra conditions that were given was following the Governor's orders correctly; it was a verbal conversation. Mr. Donahue here is indicating that he believes the Board made changes here to the ordinance. The Board responded that they did not change the ordinance; the Board was following the Governor's orders. Mr. Donahue further pursued the discussion indicating that he brought this topic up on January 20, 2021 when Sanford made an emergency ordinance and that the Board could have done the same thing. The Board disagreed because they have to go in front of the Town to change and ordinance; they only thing they can do is make policies. Mr. Donahue remanded that the Board can't make policies like that. Heated discussion continued on the Board's ability to make policies.

Next, Mr. Donahue went on regarding a time when he say during the plowing in all of this, talking about 13th Street going up to Covewood, everything from the lawyers was based on the property at the

end of Covewood. It wasn't based on whether the road was a town road. Selectmen David Winchell Jr. asked Mr. Donahue to sit down.

Mr. Donahue apologized for going over the three minutes and further indicated that when the Town Administrator brought up the property on 34th Street and the Town owning it as an easement, the Board denied it and stated it was never accepted. But the Town Administrator showed the Board that....

It was noted that Mr. Donahue was bouncing around subjects.

Mr. Donahue continued he still felt that the Board had the right and the authority to go and keep that clear for fire safety. When confusion ensued, Selectmen David Winchell responded that Mr. Donahue is implying that since we have a cistern down there, we are responsible for the whole road. Discussions again became heated as it was indicated that Mr. Donahue was turning things upside down and Mr. Donahue rebuffed those comments. Selectmen David Winchell Jr. clearly stated that the Town of Acton voted in 1974 to take over that road and then they tried to undo it in 2011 or 2012. Mr. Donahue disagreed.

Discussions on what happened at the referenced meeting continued. Selectmen Kimberly Stacey-Horn stepped in to stop the arguing back and forth. Selectmen David Winchell Jr. concluded the discussion stating the Mr. Donahue is continually bring up things that have been fought over for the last 15 years and Mr. Donahue kept countering for the Board to straighten it out. Selectmen David Winchell Jr. indicated it has been straightened out; a letter has been received from MMA and the Town's lawyers stating that Covewood Drive is legal.

Mr. Donahue continued to pursue stating that the 13 roads the Board took by prescription have still not been recorded with the Registry of Deeds. More heated discussions ensued.

Selectmen David Winchell Jr. reiterated that the Board got a legal opinion and he wanted it posted on the wall. The reason being, because there is a legal opinion on Covewood Drive. Selectmen David Winchell Jr. asked the Town Administrator if she could do that and she indicated she could; Selectmen David Winchell Jr. indicated he wanted to read it out at the next meeting.

More discussions issued regarding the fact that Mr. Donahue did not agree with this finding and the continued pursuit which provided this legal opinion. No one from Tattle Street or Buzzell Road has approached the Board because they are happy with their agreements. Mr. Donahue kept shouting our rebuttals from the audience.

Selectmen David Winchell Jr. asked Selectmen Kimberly Stacey-Horn how to move forward. Discussion ensued. Outcome was that at this point in time the Board is not going to invest anymore time regarding this issue.

10. ANNOUNCEMENTS

12/1/2021	– Board of Selectmen	6pm
12/2/2021	– Planning Board	6pm
12/4/2021	– Tree Lightening	5:30pm
12/8/2021	– Board of Selectmen	6pm
12/15/2021	– Board of Selectmen	6pm
12/16/2021	– Planning Board	6pm
12/20/2021	– Warrant & Finance	6pm
12/22/2021	– Board of Selectmen	6pm
12/29/2021	– Board of Selectmen	6pm

11. MEMBERS PRESENT

Selectmen David Winchell Jr., Selectmen Kimberly Stacey-Horn and Town Administrator Jennifer Roux.

12. ATTENDANCE

Adam Doliber, Robin Ham, Will Langley, Dennis Long, Jeff Donahue, Joyce Bakshi, Rollin Waterhouse, Tom McGurty, Joe Ruma, Lee Robitor, Mary Ann Robitor and Virginia Deboer.