

**BOARD OF SELECTMEN  
MINUTES OF MEETING  
November 13, 2012**

Selectmen present: David Barrows, Chairman, Rosendel Gerry, Jason Trundy, Julia Libby and Ladleah Dunn.

The meeting was called to order by Chairman Barrows at 6:00 p.m. at Lincolnville Central School (B-5). The quote was read by Gerry.

1. **Citizens' Forum:** None

2. **Administrator's Report:**

David Kinney, Town Administrator, reported:

- Kinney wanted to thank you to all the election workers who assisted in the November 6, election. We had over 80% voter participation; 60 new people registered to vote on election day; and in excess of 400 absentee ballots.
- Kinney thanked Doris Weed for all her help and support in training him over the last eight years concerning election procedures.
- Dog licenses will expire at the end of the year. The license can be renewed on line or at the Town Office.  
Circuit breaker program applications are available either on line or at the Town Office. A resident thanked Kinney for the information; they got back \$589.00. They didn't know the program existed until I reminded them of it. The applications are due by May 31<sup>st</sup>.

3. **Meetings & Announcements:**

Town Administrator Kinney read the upcoming meetings.

4. **Upcoming Community Events:** None

5. **Meeting Minutes:**

**Motion by Libby, second by Dunn, to approve the October 22, 2012 meeting minutes as presented. Vote 5-0**

6. **Kendall Cemetery Recommendation - Cemetery Trustees:**

Cecil Dennison, Chairman, addressed the Board. He said he took over for Moose Wotton who was very proud of the cemeteries in Lincolnville and did countless hours of volunteer work to upgrade their condition. He said we have tried to keep that up over the years. Dennison said that two years ago they got an award from the State for the condition of the cemeteries in the Town of Lincolnville. The State only gives out three a year, so it is quite a prestigious award. Dennison said they were here to discuss access to the Kendall Cemetery. The ancestors of people buried in that cemetery would like to clean it up. Kinney gave you a packet of paper in which the Town Attorney gave us four options that we can pursue: one of them being to do nothing; to gain access by eminent domain; if the cemetery is "abandoned," the municipality may acquire it pursuant to a

statutory procedure so that it becomes a “public burying ground”; or bring a lawsuit alleging a nuisance condition exists.

Barrows said after reading it over and thinking about it he recommends that the Board meet with the Town Attorney, Mr. Dennison and other members of the Cemetery Committee to determine the repercussions of all of the above possible actions. Barrows said he would like to see the stones turned back up so that people could see them. He would like an agreement for access by ancestors and other people interested in town history.

Trundy said he would be interested in talking to the attorney about the actual process concerning the options, the time commitment, cost commitment, and pros and cons to each of those options before he makes any decisions.

Corelyn Senn also spoke about the importance of having access to the Kendall Cemetery. Mr. Pattullo in his letter wrote that Harriet Wilson who was buried in 1830 was resting peacefully. When that cemetery was made and the people were buried in it the families put in very beautiful stones so that people could come to see that cemetery and remember those people. Now the cemetery has been desecrated by Mr. Pattullo. By his own admission he tipped over the stones and buried them with leaves and branches. It is really not respectful to the people who buried their family members there or to the descendents. People who live in Lincolnville remember 12 to 14 stones being there. It would be important to find them. Also, I would hope that the Selectmen, on behalf of the Cemetery Trustees, would make it possible for the Cemetery Trustees to do their duty; it is absolutely our obligation to oversee the maintenance of that cemetery, which is not possible without access. The Cemetery Trustees are not in compliance with the law. The cemetery is of great historical significance to that whole area. The mills that were in that area were vitally important to the development of Lincolnville. Cobbtown Road was the first town road and goods went up that road from the cemetery area. We had an archaeologist from the State look at the Cobbtown Road area and he found it of great historical significance. For all these reasons, I would hope that the Board would do what it takes so they we could have access to the cemetery for the town and the Trustees.

Kinney stated that he would attempt to get this on the agenda of the Board’s next meeting and let Cecil and at least two of the Trustees know.

**7. Rt. 1 Advisory Committee Update:**

Chris Osgood Co-Chair of the Rt. 1 Advisory Committee said that Diane O’Brien sends her apology for not being at the meeting tonight; she had a family medical emergency. Chris said they had a presentation for the Board from their consultant Brian Kent.

Brian Kent said he has been working with the Rt. 1 Advisory Committee since 1997. He said that what has been built on Route 1 is remarkable and shows a lot of credit to this committee. Kent said he wanted to take the Board through a chronological order of what the committee has done including: the background prior to 2012; what the committee’s goals were in addressing the cost sharing policy; and what the research and work

process has been. Out of that discussion and research has come a recommendation. Kent gave some background information about the project. The booklet given to the Board has on the last page a long list of meetings and accomplishments. This reflects 17 years of working with DOT. Everything that has been proposed over the years has been approved by DOT. Kent highlighted five landmark events. In 1997 the committee did a T2000 study funded by DOT. It set the timetable and the vision the committee had for improvements to Route 1 from Camden to Northport. With foundation funding, we prepared a diagram that simply said that we are taking steps to improve Route 1 and working in collaboration with DOT. In 1998 and 1999, the committee worked with DOT on the reconstruction of Ducktrap Bridge. The committee asked DOT that it look like the old bridge, have the arches incorporated into it, and be narrower than DOT first designed. In 2002, working with DOT consultants we got complete agreement on the design for improvements to Route 1 from Shag Rock Road to Ducktrap. The engineering design was completed by a DOT consultant. The design work that was 95% complete was ready to build. Unfortunately, the funds were cut short after that and all that got built was a piece through the beach area, but that was built to the committee's recommendations. At the end of that project from 2003 to 2009 the committee worked with other towns in the Mid-Coast area on the Gateway Project. There were a lot of public meetings, as well as and meetings between DOT and the committee. Kent said the committee made a real difference. DOT listened and a lot of what they learned from working with the committee transferred to improvements in Camden, Thomaston and other towns.

A cost sharing agreement was mentioned in the letter from DOT to Kinney. The Board appointed the committee to work with DOT on that. The goals of the committee were to work with DOT to apply the same high standards of the completed work, to enhance traffic safety, to honor the scenic character and history of the area, to support the local economy and to do this at no cost to the town. DOT promised thru out the years, right up until construction of the beach area, that the only costs to the town would be for street lights and some paving. The assumption was that DOT would make these improvements on their dollar. As to the work process, the work began with a meeting between the planners from DOT and the committee on June 19, of this year. At the outset there was disagreement on the cost sharing formula proposed by DOT. We said to DOT that you made all of these promises, but now you are asking us to chip in. It was a total change. DOT asked the committee what they would like to see improved. We said we would like to see improvements as the drawing showed. They made it very clear to us that they didn't have the power or the planners to take it any further and if we wanted further discussion we had to go higher up the ladder. They said tell us your recommendations and we will cost it out, and that is what they did. Kent showed the Board a drawing of their recommendations. Between Camden and Viking Lumber the committee proposes 11 foot wide travel lanes, no curves, 5 foot bike lanes, and landscaping ditches beyond that. There are no disagreements about that and there are no cost shares. Between Viking and Route 173 we are asking for restoration of Historic sidewalks with a crosswalk to the other side and curbs as in the beach area. Beyond Craver Lane we are asking for the historic sidewalk to be maintained or rebuilt up to Ducktrap. That's what the committee recommended to DOT and that's what they responded to. As DOT worked on their cost

estimates, we researched all documents, looked at plans and old designs, communicated with DOT by sending them extra drawings, looked at old news stories and we reviewed records of meetings with Commissioner Melrose in Rockland. In those meetings, he asked the town to prepare a Land Use Ordinance, Site Plan Review Ordinance and an Access Management Ordinance because that would help DOT and under Gateway would help wavier cost sharing. We found that two reviews see this segment of Route 1 as being its most scenic stretch. We found thru research by Diane O'Brien that there was a fascinating history to the construction of the sidewalks which is documented in the book, including references to the Maine Historic Preservation Commission having an interest in the architecture of the whole village of Ducktrap. We realized that after all of this research, we had a very strong case to present to higher ups at DOT to argue for no cost share or only minimal cost share. We considered the engineering drawings done by DOT as a promise that they would do the work. In a prior contract they said they would do the work, but then they backed off. There was a very strong approval to go with that design. We think it is time to talk to the higher ups. Kent mentioned that he knows David Bernhardt the current DOT Commissioner. Mr. Bernhardt worked on this project many years ago and is familiar with the Lincolnville issues. Kent said he thinks Mr. Bernhardt will give us a fair hearing. We recommend that you look at the letter and the book and vote on whether we should move forward on the next step. Kent said he thinks the pricing of the local cost is way out of line for a small town like Lincolnville. I think your time would be well spent talking to senior management at DOT about how we could work this out. If you look at the cost sharing agreement there are about six places where they open the doors to negotiation and I don't think we should let that go. Kent said that the book shows why the town and DOT should be very proud of their work, because it's some of the best traffic engineering in the state. The book showcases the beauty and history, and demonstrates why the towns' should be proud of what's been accomplished. It further underscores the reasons to finish the job, as was promised, to the same high standards.

Osgood pointed out that there was a lot of remarkable public input. All of the designs that they are referring to are based on interest and concerns of property and business owners along Route 1 who kept telling us what they wanted. DOT assured us regularly that the entire existing concrete historic sidewalk would be replaced with a new concrete sidewalk at their expense. We did not get written agreements on this from DOT because they refused to give it to us. In 2001, David Bernhardt complained to the Camden Herald we were slowing the project down because we kept asking for approvals of different portions of the project. DOT says yes they will do something and then they come back and say no. The letter that arrived is a little bit scarier and harsher than what we thought. My experience in working with these guys is it was completely intended to shake the Board up. The committee sent a letter to the Historic Preservation Commission asking that the sidewalk and Ducktrap village be recommended to the list of historic places. The Sensible Transportation Act basically says that if a town does this, this and this they can have their matches waved. We have hit every single button in the Sensible Transportation Act. The Gateway plan was an easy fit for Lincolnville. We had already met most of the requirements in the Gateway plan. We have had our ducks lined up for a long time. We now have to struggle with the funding.

Trundy said the request was made for them to wave our part of the contribution and this letter was their response. Trundy asked, am I understanding this correctly?

Osgood said they haven't made the request yet. We did make a request verbally, but we haven't done it officially.

Trundy said, so there hasn't been a formal request.

Osgood said knowing that the letter was coming that's why we produced the book and had the draft of the letter. We had the book basically done and a draft of the letter to the Commissioner done before their letter arrived because we knew it was coming. Those are our ways of asking to have the match waved.

Kent said they know about the letter and the book we have been very open with them. They said as planners we have to do the letter, but you have to go higher up.

Trundy ask what exactly does the process look like as far as submitting that to DOT. Where does it go? What's the time table for them to make some kind of a respond to your request? Are you expecting something in a matter of a week or two or will they drag that out? What exactly do you see as the process?

Osgood said Brian Kent knows David Bernhardt from way back. We both would like to go talk to him. We have multiple fall back positions; the big one is Gateway. Even though the Governor said I'm not funding it, Gateway didn't go away. You had twenty towns agreeing on the most contentious issue in this plan, so it's not likely to go away because other towns are going to have the same kinds of needs. In time it should rise back up again and we could get our local match for Route 52 and 173.

Kent said there's no time table, we would like to keep this moving.

Trundy ask if the committee was looking for the Board to give them the go ahead.

Osgood said yes.

Trundy stated when he looks at the \$2 million match his opinion is that it's not going to happen. Trundy suggested the committee go head and give their best possible pitch.

Osgood said we understand it's not going to happen. In the letter on the third page on the cost sharing agreement it says if the town decides not to go along with the cost sharing agreement the town is responsible for 10% of the project, which is less than half of what DOT is asking us for. The letter is a scare tactic.

Trundy asked about the National Registry.

Kent said it doesn't have to be declared a historic district, just if it qualifies that will ring DOT's bell.

Barrows said it all sounds good and I think you should continue on this.

Osgood said the committee is looking for three things, approval of the booklet to send to the DOT, draft letter to the Commissioner and to meet with the Commissioner.

Trundy asked Kinney if he would attend the meeting with the Commissioner.

Kinney said if the Board would like him to attend he would.

Trundy said he would.

**Motion by Trundy, second by Dunn, for the Board to approve Rt. 1 Advisory Committee to send the booklet to DOT and draft letter and to meet with the Commissioner.**

**Vote 5-0.**

Osgood said they had one more item on agenda which is funding. The committee is asking for \$5,000. Osgood apologized for ordering the books without the Board's permission. Osgood said that Kent has more than paid for his time over and over again.

Gerry asked when the committee was looking for the funds and the time frame.

Osgood said if there were no funds available the committee is prepared to do a fund raising effort. The committee felt the town should be pitching in some money.

Gerry asked Kinney if without going through the budget process is there something set aside for this? How would this be addressed so the town had a clear understanding of where that money came from?

Kinney said the only funds available that can be used are contingency. This would be a legitimate expense for these funds since this came up after the budget process. We are going to start next month the budget process for next year. Chris and Diane will get a note asking them to plan expenditures between July 1, of next year and June 30, of the following. You have contingency available or you could have a special town meeting to transfer funds from some other source to cover their expenses.

Gerry asked Kinney if we had to hold a special town meeting to expend those funds.

Kinney said not for contingency.

Gerry asked if the committee was asking for \$5,000.

Osgood said the committee did have a little bit of money sent aside, but has used it up. Osgood said if there was any chance they could get a portion to carry them over where they could then make a budget request.

Gerry asked if the committee had a figure on that.

Osgood said that the way he understands it the committee was thinking \$5,000 for the rest of the year.

Dunn asked with all this acceleration and no money to fund this where is the fire being lit. Is this just to get your ducks in a row in terms of being first in line for funding from the State?

Osgood said you would have to take a look at what's being built down there now and say does this look like what it is. First and foremost, it's a good economic support for the town and it helps to get business going. We need to keep up with the DOT and stay ahead of them or they will roll over you.

Dunn said all of a sudden I am hearing this pressure from you that we need to be paid for things we already spent money on, but if this isn't a project that is going to happen for two to three years, is this something you really need? Is the DOT going to move on this?

Osgood said they might or might not.

Kinney said his understanding is DOT has prioritized the State roads from priority one through priority six. Route 1 being a priority one road and DOT are looking to invest their monies in priority ones and twos to rebuild. Kinney said DOT does a planning level study on a number of projects state- wide and then throw them all in the hopper. They look to see what projects are more organized and ready to go. They are looking to create this level so when they have monies available they know where they are going to go with these projects. Kinney said Nathan Howard said DOT is only doing ten miles of road a year in the rebuild program.

Osgood said the committee has done most of the work, so if they can get this lined up it can stay close to the top.

Kinney said the other part of their rush is they are trying to get all these projects to the same level so when they do their next bi-annual transportation improvement program they can then prioritize. If you don't get the planning level work done it never even gets considered for the next design and construction phase.

Trundy said that \$5,000 is a good chunk of money the town puts away for contingency every year and he can't see the Board moving \$5,000 out of contingency for this one committee. Trundy asked if the committee is incurring cost as they go along can they come to the Town Office and say they have a particular thing they need to accomplish

and the Town Administrator could look at whatever cost was associated with it and bring it to the Board on an individual basis.

Kinney said it could be incremental. Chris and Diane or Brian could say we think we are going to need Brian so many hours in the next month or for this next phase rather than a lump sum at a time.

Trundy said the committee has the potential of saving the town tens of thousands of dollars down the road. Trundy thinks it's worth the investment, but thinks it would be a mistake to take a huge sum of money and just send it over there without there being a specific purpose.

Kent said he thinks that is durable. We have kept Kinney apprised of the ongoing cost. Kent said he feels half that amount would cover past expenses and getting to the point of meeting with the Commissioner.

Kinney said there was a little bit of money left in the Rt. 1 Advisory Committee account, but not enough to cover printing costs for the booklet or the entire bill.

Libby asked how much money is in the contingency fund.

Kinney said town's people appropriated \$10,000 and through the end of October we have expended \$65.00.

**Motion by Trundy, second by Gerry, to approve payment on the next warrant for the amount requested for the booklet and Brian Kent's services to come from the contingency account. Vote 5-0.**

The selectmen decided that in the future payment should be requested before the work is done. It was also decided to pay for Brian Kent to go to the meeting in Augusta. It was further decided that the booklet could be shared with local legislators and the public since it is now a public document.

**8. Stop Work Order – Richard Rosenberg:**

Richard Rosenberg addressed the Selectmen to discuss the action taken at a recent Board of Appeals meeting.

Barrows let Rosenberg know that they were interested in what he had to say, but they have no jurisdiction. We can't make any decision on this tonight.

Rosenberg said the town attorney said the Board of Appeals has very little jurisdiction on anything that's going on in the Appeals because of a foul up or snag in the law. Her answer to me was the Selectmen are the alternate deciders. Rosenberg said he wanted to explain to the Board what he thinks is information they should know before making the decision if it should come to you from the CEO to take me to court. Rosenberg presented to the Board Exhibits A thru G. He received a letter from Frank Therio dated August 27,

2012. Mr. Therio came to Rosenberg's property with the police chief and delivered hard copies and a verbal description of the following; a Stop Work Order pertaining to additional work that was being done after a previous Stop Work Order and a letter with the description of the details of the Stop Work Order. The other two items in this letter pertain one to a building permit that I requested for a structure being built on a neighbor and lastly a returned permit, that I submitted for a pier and dock, stating that it was not complete. Rosenberg passed out the Stop Work Order to the Board and made a comment that violations of the various listed articles have been found on these premises. Rosenberg said the CEO couldn't have found them on his premises because he was never on his property. He took pictures from across the way. On two previous visits to Rosenberg's property the CEO trespassed on his property while he was in the house. The CEO then came back later with a man from the DEP and they both trespassed on his property. Rosenberg said the Town of Lincolnville's Ordinance does not allow the CEO on any citizen's property unless he is there to check upon a permit that has been issued. Rosenberg said the CEO cannot come on a property when no permit has been issued, so since he did not issue me a permit he has no right to be on my land. Rosenberg showed the Board the legal notice of Stop Work. Rosenberg said the CEO was fully aware of what he was doing. He passed around a newspaper article in which he placed an ad on July 19, 2012. It was brought out by the attorney at my appeal on this.

Gerry asks for clarification on who took the ad out.

Rosenberg said he did. Rosenberg read a portion of a letter that informed him he was in violation of the Land Use Ordinance. The following is a list of the specific Land Use violations that require correction. He asked the Board to read the letter and tell him what is his violation, not what section of the ordinance he violated, but what did he do that is in violation.

Trundy said that no member of the Board was going to response to any question that Rosenberg had because they have no jurisdiction.

Rosenberg said according to the lawyer you have jurisdiction regarding whether to take me to court. Rosenberg said he has it on tape and that is why he is here. Rosenberg said when you're not told what you did wrong it's awfully difficult to correct it. He said he was not told in the last one that you sued me for. He said he guesses now that it is that he built the barge, because the CEO stated in his testimony at the Appeals Board that all new principal and accessories structures shall be set back at least 100 feet from normal high water mark. Rosenberg said he told the CEO he was not building a house, he was building a house boat and it's not governed by the Land Use Ordinance. Rosenberg said his whole lot is less than hundred feet from the water, what is he suppose to do. He said he got no answer. He wanted the Board to know that the CEO had knowledge of the barge and knew what Rosenberg was doing. The barge is now upside down in the pond and the work he planned to do on land he will do in the water instead. Rosenberg asked the Board to check with the town attorney who said the Appeals Board had no standing in the matter and that final decision was with the Selectmen. He asked the Board not to sue him. Rosenberg thanked the Board for their time and courtesy.

9. **Town Office Project Update:**

Kinney stated that the article to approve renovation and expansion of the Town Office was approved by the voters last week and the Board has in their packet a contract for Design Development and Construction Administrator from 2A Architects. There have been a couple of revisions to the contract that were proposed with recommended changes, which are fine with 2A Architects. Kinney suggested the Board make a motion to authorize him to sign the contract.

**Motion by Gerry, second by Libby, that the Board authorize the Town Administrator to execute the contract with 2A Architects to assist the Town with the Design Development through Construction Administration of the Town Office renovation and expansion project. Vote 5-0**

**Motion by Gerry, second by Libby, that the Board instruct the Town Administrator to explore alternatives for a temporary Town Office and that he report back to us his findings. Vote 5-0**

Kinney said the architects and Municipal Building Committee believe it would be less expensive to temporarily relocate the Town Office and its functions from the building during renovations and construction. We will search for someplace to go.

10. **MRC Board of Directors Election Ballot:**

**Motion by Gerry, second by Trundy, that the Board cast its vote for Tony Smith for the Municipal Review Committee Board of Directors. Vote 5-0**

11. **December Meeting Schedule:**

Kinney stated that with Christmas Eve being on Monday December 24<sup>th</sup> it is unlikely that anyone will want to attend a Board of Selectmen's meeting and traditionally this is a very slow time of year for business. Kinney suggested that a regular Board meeting not be held and that only the payroll warrant and Treasurer's warrant be approved at some point during the last week of December. Jodi will call one of the Selectman to come into the office to sign the warrants. The Town Office will be closing at noon on the 24<sup>th</sup> and will be closed all day on the 25<sup>th</sup>. Normal office hours will resume on Wednesday, December 26<sup>th</sup>.

12. **Treasurer's and Payroll Warrant(s) – Approve and Sign:**

**Motion by Trundy, second by Gerry, that the Board approve and sign the Treasurer's and Payroll Warrants. Vote 5-0.**

13. **Adjourn:**

**Motion by Libby, second by Trundy, to adjourn the meeting. (7:40 p.m.) Vote 5-0.**

Respectfully submitted,  
Cheryl Ten Broeck  
Administrative Assistant

