

TOWN OF LEE  
SPECIAL TOWN MEETING

SB2 DELIBERATIVE SESSION  
August 8, 2011

MINUTES

Town Moderator, Jan Neill, called the Deliberative Session to order at 7:00 pm.

She indicated that the former Selectman, Joe Ford, is not in well health and is at Wentworth Douglas Hospital.

She stated that this is the first standardized official ballot referendum meeting, known as SB2, for the Town of Lee. As put forth in RSA 40, the evening is the first of two sessions. This is the deliberative session to discuss and/or amend any warrant articles brought forth. Then voting will take place on September 6<sup>th</sup>.

Anyone who wishes to speak will need to wait and be recognized by the Moderator, come up to the microphone, and clearly state their name and address.

Going forward, she stated that she does not strictly adhere to Robert's Rules of Order. She likes to see courtesy, civility, consideration and common sense guide the deliberative session.

Moderator Neill posed the question, as in previous town meetings, is it the will of the legislative body to not reconsider a motion once moved and acted upon. By a show of voter cards, the question passed. There will be no reconsideration once a motion is moved and acted upon.

The Moderator then recognized Chairman LaCourse, Selectman.

Chairman LaCourse read Article 1 as written.

**Article 1. To see if the Town will raise and appropriate the sum of one hundred seventy-nine thousand dollars (\$179,000.00) and up to four thousand dollars (\$4,000.00) in transaction costs, for the purchase of 1.46 acres of land located 5 Mast Road. The property is identified by Map #11-06-200 and owned by Three Swallow Properties, LLC.**

**The building, other items and any environmental concerns will be addressed, removed and/or discharged prior to the town acquiring the land.**

- **To authorize the withdrawal of \$91,500 from the Land Use Change Tax Trust Fund.**
- **To authorize the expenditure of \$91,500 from the General Fund.**

**(The Selectmen recommend this appropriation. Majority vote required.)**

He moved to make a friendly amendment to the verbiage changing the words General Fund to unreserved fund balance so that the Article read as follows:

**To see if the Town will raise and appropriate the sum of one hundred seventy-nine thousand dollars (\$179,000.00) and up to four thousand dollars (\$4,000.00) in transaction costs, for the purchase of 1.46 acres of land located 5 Mast Road. The property is identified by Map #11-06-200 and owned by Three Swallow Properties, LLC. The building, other items and any environmental concerns will be addressed, removed and/or discharged prior to the town acquiring the land.**

- **To authorize the withdrawal of \$91,500 from the Land Use Change Tax Trust Fund.**
- **To authorize the expenditure of \$91,500 from the unreserved fund balance.**

**(The Selectmen recommend this appropriation. Majority vote required.)**

Selectman Frank DeRocchi seconded the amendment.

Chairman LaCourse explained that opportunities come up where a piece of land might be valuable for the Town of Lee. This piece of property is adjacent to the Town Hall. He indicated that, at this time, the Board of Selectmen is not moving forward to make a recommendation for what the property will be used for. The Selectmen did put out a handout with suggestions of a pocket park, additional parking, or an extension of the building – it could be a lot of things. But the purpose of this session is to see if the legislative body is interested in acquiring the land. He indicated that no monies need to be raised as the funds are already available.

Moderator Neill opened the floor for further discussion.

Dwight Webb, 28 Riverside Farm Drive, spoke in favor of purchasing the property.

Jim Banks, Carpenter Lane, stated that he understands that any environmental issues will be resolved before the Town takes title. However, he asked what if some condition that exists that is okay today becomes not okay ten years from now because the EPA figured it will

save 12,000 lives if it's taken out, who pays to get it out? Chairman LaCourse stated that at point, the Town of Lee would if it owns the property.

His second question was in regards to the letter sent out regarding this Special Town Meeting. In it was stated there were two appraisals, one being a formal appraisal and one being an informal appraisal. He asked what is an informal appraisal? Selectman DeRocchi stated that the initial appraisal of \$25,000 was provided by a certified appraiser. The way this appraiser looked at the property was the requirements to move the structure and costs associated with that. He did not look at what it was going to end up being when it was completely prepared for the Town to accept from the current owner, which was one issue. The other issue, he was looking at the property from a point of view as far as comparing like properties in Epping and Plaistow area where we find the value of property down there is somewhat different than within the Lee structure. With that being said, the Selectmen asked to have an appraisal done by people that work within the Lee area. Their appreciation was that the land was closer to the \$150,000 to \$155,000 number, realistically. In looking at what it would cost to buy a lot in Lee in the last few years, that number seemed very realistic for that piece of property.

Mr. Banks stated that building lot is marginally a building lot due to setbacks from the road, from the water, from the sides of the land. Selectman DeRocchi commented that there are some restrictions on the property but it is a building lot.

Mr. Banks commented the Lamprey River Association bought a piece of property on the river last year or so that gave them about five hundred feet of river frontage so that they could launch canoes and that kind of thing and that piece of property sold for \$12,000 (which included \$5,000 of appraisal fees) and is about half the size of this one, but it was not under water. This number seems a lot closer to the \$25,000 than \$150,000.

Selectman DeRocchi commented that waterfront property has a lot of restrictions as far as the shore land protection act and others. He stated the Selectmen negotiated with the owner a number that was less than what he was asking for and what they thought was closer to the realistic value of the property. It is really up to the taxpayers to make a determination as to what they want the center of Lee to look like and this opportunity is here today. One could wait to see if something else will come along, or something will happen over there and the price will be a lot less. Mr. Bannister has given the Town the opportunity to make this happen if it wants it to now. If the price gets changed, it would be up to Mr. Bannister to make the decision.

Mr. Banks stated he has no problem of how the property would look; he just does not want to pay too much.

Henry Brackett, 2 Wheelwright Drive, asked the name of the company that did the second appraisal. Selectman DeRocchi stated he did not have the name in front of him. Mr. Brackett asked if there is a written appraisal. Answer from Selectman DeRocchi was that it was a verbal appraisal given to the Selectmen on what the company had reviewed.

Mr. Brackett queried what the original starting price for the property was. Selectman DeRocchi answered that it started around \$279,000, with the structure on it.

Mr. Brackett stated that he thinks it is a good idea to buy it, but is not sure it is worth the money.

Chairman LaCourse stated that \$275,000 was the original asking price.

Bruce Larson, Allen's Avenue, asked what the loss in tax revenue would be. Town Clerk/Tax Collector Linda Reinhold answered, after calculating, approximately \$8,000. Mr. Larson stated that his \$50 contribution to the landowner once, then the Town will lose that revenue for perpetuity.

Mr. Larson asked if the property is not purchased, what happens to the zoning? Selectman DeRocchi stated that his understanding is that the property has a variance on it to allow it to operate as a commercial enterprise with a two room apartment above it and that is what it can work as, or a single residential unit.

Mr. Larson was unclear as to what this emergency is. Selectman DeRocchi explained that the emergency from Mr. Bannister's point of view is that he has until September 8<sup>th</sup> to make a decision to retain his right to develop that property back to where it was. If he does not make a commitment to that property by September 8<sup>th</sup>, then he loses the zoning variance he has. Mr. Larson then asked could not the new owner or Mr. Bannister apply for a new variance? Answer from Selectman DeRocchi was yes.

Mr. Larson commented that he did not understand why a few appraisals were not done and then possibly average them to come up with a number, similar to going out to bid for a police cruiser or fire truck to obtain a range of bids. He also questioned the \$161,000 appraised value stated in the letter sent out. On the tax card the value is \$116,000.

Kevin Shenefiel, 2 Wednesday Hill Road, commented that he opposes the purchase.

Fred Schultz, 22 Cartland Road, questioned why Mr. Bannister doesn't pull a building permit now. Selectman DeRocchi stated he could not answer for Mr. Bannister. Mr. Schultz also questioned the price of \$179,000 when other properties are selling for less.

Alan Dennis, Code Enforcement Officer, stated with respect to the building permit and zoning, Mr. Bannister has to pull a permit within a year under Article III of our zoning regulations and has to start construction within that year. Under Article XXIII, that is a legal nonconforming use, two apartments, the store and a little mercantile. Under Article XXIII-2, cannot be reestablished after discontinuance for one year. The fire was September 8 and if he does not start building within a year, he will lose that legal nonconforming status.

Mr. Dennis met with Mr. Bannister and discussed when he should pull the permit. In light of this forum and the vote coming up next month, it did not seem prudent to go to the Zoning Board at this time should the Town decide to purchase the property.

Tom Dolan, 11 Lamprey Lane, with respect to Allan's comments, stated this property burned down a year ago. There was a Town Meeting in March. He questioned why did this not materialize six months ago if this was Mr. Bannister's intent all along? Chairman LaCourse responded that it is not all Mr. Bannister's fault. There was a lot of discussion among the Board of Selectmen as to when to move forward and what not to move forward. What they were trying to do, at this time, is to acquire a piece of property that they think would be beneficial to the town. Maybe from the Board of Selectmen they dragged their feet a little bit, no particular reason, it just went back and forth and time went away.

Mr. Dolan responded that it puts the voters of the Town under a certain amount of pressure. If one looks at it from a practical, economic sense, he questions the justification of the purchase. Also, he is concerned on potential discovery of contamination in the future if one goes to build a septic system there. Mr. Dolan asked if septic designs have to be approved by the state. Allan Dennis responded yes. Mr. Dolan expressed concern on the circumstances and the prices under which this is purposed.

Chairman LaCourse responded that he understands Mr. Dolan's concern on the issue in front of the Town regarding the price, that some think is a little bit high, but that was a negotiation between and the owner of the property. Chairman LaCourse looks at this as an opportunity to acquire a piece of land that is close to its town center. This is an opportunity to put a small public park, or gazebo, or added parking, or extension of the building. At this point, the needs of the Town of Lee in the near future or far future is not known, but this is an opportunity that is out there. He agrees that it is a little tight crunched and maybe the price is a little high, but that was a negotiation. Obviously, when the town goes to vote in September and if it is voted down then the owner of the property has every right to get a building permit and go to the zoning board of adjustment.

Chairman LaCourse reiterated that the funds that are being used for this purchase are already in hand. They are not looking for new funds to raise anymore capital at this time.

They are available in the unreserved fund balance and from the land use tax change funds trust.

Steven Knaiz, 35 Jenkins Road, asked if the Town owns any other land that is buildable and developable in another part of town that could be swapped for this so that the Town would not lose revenue on the taxes. The Selectmen responded there is none to their knowledge. Mr. Knaiz submitted that the cost of this is close to one half million dollars because the town is giving up \$8,000 in revenue for perpetuity plus the purchase price of \$179,000. He does not think the Town should be taking property off the tax roles. He stated that it sounds like a great idea to buy the property; however, he would be opposed unless the Town could put something else in play that the Town holds that would generate \$8,000 or more in tax revenue.

David Cedarholm, 81 Fox Garrison Road, asked if there is still a Town Center Committee. Selectman DeRocchi stated that he believed it had been disbanded.

Mr. Cedarholm asked if that committee developed formal recommendations that may have supported this type of acquisition. Allen Dennis answered that the committee did not. He continued by stating the committee looked at all the land that was available at the time within a half mile radius of the center of town and this property was not on the radar.

Mr. Cedarholm commented that he thought the Town Center Committee was moving in a great direction. He had participated in the Charrette and there were some great points that came out of the Charrette with regard to developing a town center. He remembers three key points. One was a place where residents can live and encourage residents to live near the town center, another was access for pedestrians so it could be a walking town center and the third was that there be commercial enterprises. He expressed it would be a shame to lose the last commercial enterprise in town.

Mr. Cedarholm asked what level of contaminant investigation was done when the fuel tanks were removed. Allan Dennis responded that the only study he is aware of is just a one liner that when the tanks were removed and the soil was tested around where those tanks were taken out. Mr. Cedarholm suggested a phase two investigation of sampling the ground work.

Mr. Cedarholm asked about the status of the septic system at Town Hall. Allan Dennis responded that it is a dry well, not an actual septic system. Mr. Cedarholm suggested looking at alternative state of the art septic systems like composting toilets and grey water recycle systems which would be a whole lot less than purchasing this property.

With respect to the reserve fund balance, Mr. Cedarholm commented that he felt the town was on a great track with the library on raising funds over the next five years, but this is distracting from that endeavor. He asked how much is actually in the fund balance. Interim Town Administrator, Chet Murch, answered that, as of June 30<sup>th</sup>, it was \$1,778,918.

Paul Gasowski, Lamprey Lane, asked if this sale could be contingent upon monitoring wells prior to the final agreement. Chairman LaCourse responded that he was not sure at this time and that might have to be another negotiation.

Mr. Gasowski commented on the Town Center Committee focus which became two areas, the municipal office location and Little River Park, future site of the library. The final drawings of the municipal center and one of the difficulties the committee had were where to place the septic and what to do with the parking.

Mr. Gasowski expressed that the Town needs to create a community where people can walk in their neighborhoods, ride bikes, and feel some sense of community without having to hop in their cars to go to Portsmouth or Durham to get a bit of culture and social interaction. Mr. Gasowski supports this proposal.

Mr. Gasowski asked at the time of negotiations with Mr. Bannister, was there an insurance settlement on the property or some remuneration for the value of the property? Chairman LaCourse stated there was no discussion regarding that.

Wendy Fogg, Wednesday Hill Road, commented that the Town needs to have a five year plan, a ten year plan and a fifteen year plan. Not only for financial needs but also the benefits and consequences of decisions that will be borne by future generations. The Town of Lee has a tremendous opportunity to save the historic buildings in the Town Center and an opportunity to have this piece of land that can add to the possibilities of reality happening with the town center and preserving and restoring the historic buildings, adding on to them, connecting them, creating a wonderful town center. Ms. Fogg expressed that this is a good investment.

Ed Bannister, 2 Mast Road, addressed Mr. Cedarholm's concern regarding the water. He stated that because it was a commercial property and had a restaurant or deli, it was regularly tested by the state. The water has always come back clear as long as the state has been testing.

And, in response to Mr. Gasowski's question, Mr. Bannister stated that there was a problem with his insurance and there was no payment from them.

Bill Humm, Birch Hill Road, stated that the opportunity of this property came to the Conservation Commission early last winter when they had some informal discussion among themselves about the property and the opportunity for the Town Center Committee. Mr. Humm wrote a letter to the Selectmen requesting they seriously look at this property and consider acquisition. The Selectmen, in turn, asked if the Conservation Commission would consider paying for the property.

The Commission came to the conclusion that acquiring the property would have some conservation values, further protection of the bog, a beautiful open space, a potential pocket park, an access point for hiking into the town forest, and an information kiosk. For those reasons, the Commission responded to the Selectmen that they would have an interest in supporting some portion of the acquisition cost, up to 50%.

Steven Knaiz asked if once conservation funds are used, does not that preclude any further construction on that location? Mr. Humm stated that it does not. He explained that what was conveyed to the Selectmen was that the Commission would like to have a memorandum of understanding that the Conservation Commission would negotiate with Board knowing that the Town does not want prohibitions on future uses of the property. They would like to have an arrangement with the Selectmen that as future uses are contemplated, there would be a conversation and decisions would be made with good conservation practices.

Larry Roop, 48 North River Road, supports the purchase of the property.

Jen Messeder, 147 Wadleigh Falls Road, wanted clarification on the statement in the letter sent out regarding the \$50.00 tax increase and is it ongoing or a one time increase. Selectman DeRocchi answered that the \$50.00 was computed by taking the current total taxable property in Lee, the price that will be taken out of the capital surplus fund which represents \$ .19 per thousand. The \$50.00 is one time.

Ms. Messeder questioned if used for septic, would that limit any other usage. Allan Dennis answered that there various types of septic design that are install today, for instance, the septic at Wendy's is driven over.

David Cedarholm asked how is it decided what will be done with the property if purchased? Chairman Selectman commented that there would probably be a committee formed to make recommendations.

Mr. Cedarholm asked why the fund balance is so high. Chairman LaCourse commented that they work with the state with respect to the fund balance and that is not a high number for this town. Working with the state auditors and other bodies involved, they indicate the funds needed.

John Tappan, 187 Stepping Stones Road, wanted to upgrade the correction of the calculation of the current value of future tax revenue. He stated that the single value of future tax revenue is not the important figure; it is net revenue which is the tax revenue less expenses to the town. Depending on who is living in the apartments, i.e., number of school age children, the net revenue may be a negative number.

Leslie Martin, Margaret Lane, commented that Mr. Bannister should be allowed to build a tasteful business and that the Town needs to be careful on its spending. Chairman LaCourse clarified that it is not the Board of Selectmen's responsibility or anybody's to tell Mr. Bannister what to do with his property.

Selectman DeRocchi commented on the lost revenue on tax base.

Kristin Forselius, 222 Wadleigh Falls Road, asked if there was a written appraisal.? Selectman DeRocchi confirmed that there was no formal written appraisal.

Roger Rice, Garrity Road, stated he is comfortable with the price and feels the Town should vote yes.

Kevin Shenefiel commented that technically speaking, this property does not provide any access to the town forest.

Geoff Carlton, 24 Sawyer Road, commented that he was on the Town Center Committee. They brought in the best and brightest minds around the state for assistance in the project. The one thing that they continually brought up about the town was Lee had great community houses and also a small little downtown. By purchasing this property, it will take away the one spot for commercial development.

Jim Banks asked about the fund balance, questioning clarification if the fund balance gets too small because it gets used for something, do the property taxes go back into it to build it back up again. Selectman LaCourse concurred stating the fund balance is like a bank account. The monies are not spent unless absolutely necessary.

Sherrie Griffith, Riverside Farm Drive, asked if this property is currently zoned commercial. Answer, yes.

Mr. Brackett makes a motion to amend the figure to \$140,000. Moderator Neill states she needs five registered voters, in writing, to second the motion.

Suzanne Gabe, Pine Knoll Village, expressed concern on paying full price for this property. Chairman LaCourse stated that the price is a negotiated price between the Selectmen and Mr. Bannister.

Richard Whitney, 158 Wednesday Hill Road, is undecided on this issue. He commented that fair market value is what a ready, willing and able buyer and a ready, willing and able seller agree to. The assessment has nothing to do with that. He expressed concern on the environmental issues. Mr. Whitney commented, in his opinion, the best use for the property would be an apartment building. He does not want to see a municipal complex to take over the Town of Lee.

Andy Lelio, 31 Hobbs Road, thanked the Selectmen for bringing this forward to the residences of Lee. He addressed the comments on an appraised value does not matter. Mr. Lelio stated it does matter because it would help the townspeople make a decision, on their own, as to the appropriateness of the purchase price negotiated with Mr. Bannister.

Moderator Neill called Mr. Brackett back to the podium. She stated that it was brought to her attention that she erred in requiring five written signatures to potentially amend the warrant. So she turned the floor back over to Mr. Brackett.

Mr. Brackett decided to withdraw his motion.

Patricia Jenkins, 9 Harvey Mill Road, commented that, like the Conservation Commission, the Heritage Commission also had long discussions regarding this property when it became available. Their feeling is that this property should belong to the Town.

Wendy Fogg reminded everyone that this price is not negotiable.

Chairman LaCourse commented that Ms. Fogg is correct in that this is a drop dead price – it is this price or not at all. They negotiated in good faith. It is a one time opportunity for the town of Lee to grab this piece of space that could be used for the better good of the community in the future. It is for others to discuss in committees, boards and the legislative body as to what the better good is.

A motion was made to adjourn, seconded by many. By a show of voter cards, the Moderator adjourned the meeting at 9:00 pm.

Respectfully submitted,

Linda R. Reinhold

Town Clerk