

**Board:** Board of Selectmen/ Water Commissioner's Meeting  
**Date:** Tuesday, June 25, 2019  
**Location:** Senior & Community Center, 1 Care Drive, Erving, MA 01344

**Selectmen Present:** Scott Bastarache, William Bembury, Jacob Smith  
**Finance Committee:** Benjamin Fellows, Debra Smith, Charles Zilinski  
**Capital Planning Committee:** Peter Mallet, Linda Downs-Bembury  
**Also, Present:** Bryan Smith, Peter Sanders, Glenn McCrory, BettyLou Mallet, Richard Newton, Earlene Harold, Morris Housen, William Wescott  
**Press:** Katie Nolan, Montague Reporter; Melina Bourdeau, Greenfield Recorder

#### **Senior & Community Center HVAC Project Update**

**Chairman Smith** gave the Board an update on the Senior & Community Center HVAC project, explaining that the Highway Department had installed a new concrete pad for the equipment, the agreement with Energy Conservation Inc had been executed and the equipment is scheduled for installation in the coming week. **Chairman Smith** added that Chief Wonkka had coordinated use of a mobile air condition unit from the Massachusetts Department of Fire Services. The Board expressed their appreciation to all departments for progressing this project.

#### **Library Construction Project Update**

Bryan Smith, Administrative Coordinator, provided the Board with an update on the construction progress of the new Public Library. Bryan explained that framing has continued and the structural beams that will support the roof are being installed. **Selectman Bastarache** asked about the exterior color options and if it will result in a possible change order. Bryan explained that the general contractor learned that the siding product that was specified no longer is offered as a pre-primed product and that there was a concern about a potential change order request. Bryan explained that the general contractor has identified a vendor that can receive the siding product and prime the material before it is shipped to the site for construction. Bryan added that the Library Building Committee is currently meeting with the Owner's Project Manager (OPM) and the Architect about exterior color options and should have a recommendation soon.

#### **Review of Meeting Minutes of June 17, 2019**

The Board passed over this agenda item and will review at the July 08, 2019 Board meeting.

#### **Update on Senior Housing Request for Proposals**

**Chairman Smith** explained that the proposal deadline for the Senior Housing request for proposals (RFP) was Thursday, June 20, 2019 and that by the deadline the Town received a correspondence from Rural Development Inc (RDI) and the Franklin County Regional Housing and Redevelopment Authority that stated that they are declining to submit a proposal at this time. **Chairman Smith** clarified that there were no other agencies that were in the running to submit a proposal and as a result, the procurement has officially failed. **Selectman Bembury** discussed wanting to schedule a meeting with the Senior Housing Committee to discuss the experience with the RFP process and the feedback received from RDI. Bryan explained that the process provided great feedback and will be used to inform a future procurement. **Selectman Bastarache** talked about the need for Erving to do the analysis on the Return on investment for a fully occupied housing complex. **Chairman Smith** expressed agreement with both **Selectmen Bembury** and **Bastarache**. Bryan will work with **Selectman Bembury** and the Senior Housing Committee.

### **Brownfields Grant for IP Mill and Engineering Services Proposal from Tighe & Bond**

The Board reviewed a proposal from Tighe & Bond for licensed site professional and engineering services for the hazardous materials remediation at the Milers Falls (IP) Paper Mill. Bryan Smith, Administrative Coordinator, explained that it is a requirement of the Brownfields remediation program that a licensed site professional oversee the clean-up activities. Bryan added that funding is available in a previous special appropriation for this purpose. **Chairman Smith** added that Mass Development is ready for the Town to sign an agreement for the \$200,000 in funding prior to the end of the fiscal year.

**Chairman Smith** made a motion to engage Tighe & Bond for asbestos and hazardous materials abatement, licensed site professional, design, and construction phase services for the former International Paper Mill, for a total sum of \$63,300. **Selectman Bastarache** seconded. **Vote:** Unanimously approved.

**Chairman Smith** made a motion to authorize Bryan Smith to execute Brownfields Recoverable Grant agreement for hazardous materials remediation at the Millers Falls (IP) Paper Mill, in the amount of \$200,000 with Mass Development. **Selectman Bastarache** seconded. **Vote:** Unanimously approved.

### **Anonymous Letter Regarding Speed Monitoring on Pratt Street**

**Selectman Bastarache** addressed receipt of an anonymous letter that raised concern about speed monitoring on Pratt Street. **Selectman Bastarache** read the following paragraph into the record:

*"My concern is that this system or machine could be installed at a much better location in town, such as the locations mentioned, other than in front a select board member's house on Pratt Street."*

**Selectman Bastarache** stated that he wanted to be "very clear" that the speed monitoring sign has never been placed in front of his home and that he has never requested the placement of the equipment. **Selectman Bastarache** explained that the Chief of Police was responding to a request from a resident on Pratt Street. **Selectman Bastarache** encouraged residents to contact Chief Blair if they have questions and requests for the equipment. **Chairman Smith** expressed his agreement and explained that the Board's actions are typically in response to concerns expressed by citizens and not a selectman's preference.

### **1<sup>st</sup> Water Abatement for FY2019**

The Board reviewed the 1<sup>st</sup> Water Abatement for FY2019 in the amount of \$40.00 for Ralph Semb, account number 278. **Chairman Smith** made a motion to approve the 1<sup>st</sup> Water Abatement for FY2019 in the amount of \$40.00. **Selectman Bembury** seconded. **Vote:** Unanimously approved.

### **Right of First Refusal for 143 Old State Road**

**Chairman Smith** explained that the Board is in receipt of another request to waive the Town's right of first refusal for the sale of 143 Old State Road. The previous sale offer was not completed, and the property owner has received a new offer. The Board expressed their agreement that they are not interested in the Town owning 143 Old State Road. **Chairman Smith** made a motion to sign the waiver of first right of refusal for land located off Old State Road, Erving 6.7971 acres in Plan Book 123, Page 67 and further described in Book 5326, page 165. **Selectman Bembury** seconded. **Vote:** Unanimously approved.

### **Review of Special Town Meeting Warrant and Review of the River, Warner, Strachan Street Project-Joint Meeting with the Finance Committee and Capital Planning Committee**

At 6:25 PM **Chairman Smith** called the joint meeting with the Finance Committee and the Capital Planning Committee to order.

### ***Review of River, Warner, and Strachan Street Project***

Glenn McCrory, Highway Foreman, joined the meeting and explained the scope of the proposed project. Glenn explained that the proposed project would add sidewalks along River Street and Strachan Street, and would replace the existing sidewalk on Warner Street. Glenn added that the project would create the proper pitch on sidewalks and driveway aprons so that storm water would flow to the roadway and into the storm drains with the adjustment of existing structures. The proposed work would mill the existing road way and resurface. Glenn explained that core samples were taken and that the road structure is only 4" to 5" thick and would be too costly to fully reclaim and repave. Glenn added that signage would be replaced, and the layout would be more ADA compliant. Bryan Smith, Administrative Coordinator, added that the Board adopted a complete streets policy and that the Town was working to accommodate various modes of transportation within the public layout. **Chairman Smith** asked if there is an opportunity for the Tree warden to plant new trees in the layout. Glenn will talk to Tree Warden and Weston & Sampson about appropriate opportunities for tree plantings noting that several locations within the layout are narrow. **Chairman Smith** suggested offering trees to land owners. Bryan stated that when the Board decides to move forward with this project, the Town will schedule a site visit and community meeting with residents. **Selectman Bembury** asked if Police Department road details would be required. Glenn explained that work near Bridge Street would require a Police detail and explained that the Town's proposed work would align with the work being conducted by MassDOT on Lester and Moore Streets. **Chairman Smith** explained that the probable cost for the project is approximately \$650,000. Bryan explained that when this project was conceptually discussed with the Capital Planning Committee, Finance Committee and the Board of Selectmen, it was anticipated that the Town would have approximately \$300,000 from Chapter 90 funds along with the \$200,000 approved with the capital improvement plan. Bryan explained that he will research grants and any questions that Board, and Committee members may have. **Selectman Bastarache** discussed the need to search for grants and to explore multiple funding options. Glenn explained the general good conditions of roads and explained his approach to saving multiple years of Chapter 90 funds to put towards this project. Debra Smith asked Glenn to estimate the useful life of the project. Glenn estimated a 30-year useful life for the project, explaining that the neighborhood has limited truck use and is primarily residential area. Debra asked if the Town would have to conduct any permanent or temporary construction easements takings. Bryan explained that all work that is currently proposed is within the Town's existing layout and would not require any takings. The Board, Finance Committee, and Capital Planning Committee agreed to meet again to discuss how to proceed with the project.

### ***Review of Special Town Meeting Warrant***

The members of the Board of Selectmen, Finance Committee and Capital Planning Committee reviewed the Special Town Meeting warrant. No members expressed questions or concerns. **Chairman Smith** explained that he was prepared to make an amendment to the funding source for Article 4, to change the source from Free Cash to the FY2019 Fire Department expense budget. The Board and the Finance Committee members had no concerns with the stated amendment.

### ***Recess for Special Town Meeting***

At 6:51 PM **Chairman Smith** made a motion to adjourn the joint meeting of the Board of Selectmen, Finance Committee and Capital Planning Committee, and to recess the Board of Selectmen meeting until the conclusion of the Special Town Meeting. **Selectman Bastarache** seconded. **Vote:** Unanimously approved.

At 8:01 PM **Chairman Smith** called the meeting of the Board of Selectmen back to order from recess.

### **3<sup>rd</sup> Party Wastewater Agreement- Negotiation with Erving Industries**

Morris Housen and William Wescott from Erving Industries joined the Board to negotiate a renewal to the 3<sup>rd</sup> party wastewater agreement. Peter Sanders, Chief Wastewater Operator, also joined the Board.

**Chairman Smith** opened the meeting with an overview of the last discussions that had occurred between both parties. **Chairman Smith** noted that the Town had received the audit of the 2018 gross receipts electronically from Erving Industries and the Board agreed that they had no concerns about the findings.

**Selectman Bastarache** asked Morris and William if they could address the previously noted discrepancies between the monthly, quarterly, and annual reports that the Town receives from Erving Industries. William explained that the discrepancies were tied to the timing of receipts and reconciliation as well as the control of delivery tickets. William explained that receipts and accounting are now reconciling monthly and that delivery tickets are now sequentially controlled and recorded regularly. William provided the Board with printed copies of the audited financials. Morris asked the Board if he could present information related to the history of the contract between the Town and Erving Industries. Morris articulated that he believes that the history is important to the negotiations. **Chairman Smith** explained that he and the rest of the Board would be open to receiving information related to the history and/or scheduling a separate meeting to discuss the history, but that he would like the conversation to remain focused on the negotiation of the 3<sup>rd</sup> party wastewater agreement. **Chairman Smith** noted that at the last meeting, Morris had presented a request that the Board renew the agreement for a new three (3) year term and reduce the revenue sharing percentage from 10% to 0%. **Chairman Smith** explained that the Board was not willing to accept a reduction in the revenue sharing percentage and instead would like to request that the agreement return to the revenue sharing arrangement that was agreed upon in the February 19, 2007 version of the agreement. **Chairman Smith** explained that the Board has discussed this proposal with the Town's legal counsel and believes that the agreement was determined to be fair and equitable. Morris questioned the Board's rationale for requesting the change in revenue sharing. **Chairman Smith** explained that various incarnations of the Board of Selectmen have made different decisions overtime, noting that in the 2017 agreement the current Board agreed to a 10% rate with the acceptance of wastewater from POTW#1 at POTW#2. Morris questioned the definition of the term "fairness," stating that the Board has all of the power in this negotiation. Morris further asked for an explanation of how the Board had arrived at their decision. **Chairman Smith** noted that the perception of what is "fair" can be relative and added that the Board heard Morris' concern about decreasing revenues and that if the agreement adopted the 2007 fee table, no revenue would be shared with the Town if receipts were less than \$200,000 in a year.

**Selectman Bastarache** acknowledged Morris' frustration and spoke to his to experience discussing the matter with counsel. **Selectman Bastarache** spoke to the uniqueness of this situation of revenue sharing of 3<sup>rd</sup> party wastewater revenue with Erving Industries. **Selectman Bastarache** explained that his position on the matter trusts the recommendation of counsel. William also spoke to the uniqueness of the operating model and the challenge with designing a revenue sharing table that is equitable. William asked the Board to further explained their concept of "fairness." William asked if the Board could provide the supporting documentation from the 2006 - 2007 time period that informed the decision making at the time. The Board stated that staff could check the records, noting that record retention usually requires only a seven (7) year holding of the materials. William asked that information that Morris prepared be added to the supporting documentation of the meeting. The Board agreed. **Selectman Bastarache** clarified that the negotiation is valid, that both parties are welcome to propose counter positions, and encouraged Morris and William to caucus in a private room and return to the meeting with a counter proposal. Morris asked to submit documentation for the Board's review and discussed the history of the arrangement between the Town and Erving Industries. Morris discussed the initial investment of all parties and the longitudinal investment from Erving Industries. Morris stated that he understands that

the property ownership and permit ownership rests with the Town. Morris proposed that the 3<sup>rd</sup> party wastewater agreement be renewed with a 20% revenue share. **Chairman Smith** thanked Morris for the historical perspective and noted that the recipient of the federal and state grants to construct POTW#2 was the Town and that the 1973 agreement for Erving Industries to operate POTW#2 is an evergreen agreement that is renewed every ten (10) years at the sole discretion of Erving Industries. **Chairman Smith** offered a willingness to discuss amendments to the original agreement between the Town and Erving Industries if the Mill would like to request them. **Selectman Bastarache** expressed his concern with the suggestion that the negotiations are a one-sided arrangement that favors the Town. **Selectman Bastarache** noted that if the Town fully operated POTW#2 and if Erving Industries was a customer, the current cost of disposing of wastewater would exceed the operational costs the mill experiences today. Morris agreed that Erving Industries' operation of POTW#2 does help with the overall operation of the mill. **Selectman Bastarache** added that from his understanding the 2007 agreement that was entered into it seemed fair to all parties. Morris stated that he would like to take some time to meet with William outside of the meeting. The Board agreed and noted that they would enter Executive Session.

#### Executive Session

At 8:36 PM **Chairman Smith** made a motion for the Board to enter Executive Session pursuant to MGL Chapter 30A, Section 21 (3) to discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares. **Selectman Bastarache** seconded. **Vote:** A roll call vote was taken:

<b>Chairman Smith</b>	Aye
<b>Selectman Bastarache</b>	Aye
<b>Selectman Bembury</b>	Aye

At 8:41 PM the Board returned to open session and resumed negotiations with Erving Industries.

**Chairman Smith** informed Morris that the Board was willing to accept the offer of 20% of all revenue collected through the 3<sup>rd</sup> party wastewater operation. Morris responded that after further consideration he would like to withdraw his proposal and accept the Board's original offer of returning to the revenue sharing table as stated in the 2007 3<sup>rd</sup> party wastewater agreement. The Board expressed their acceptance of Morris' proposal to return to the revenue sharing table from 2007.

Morris asked the Board if they would consider only requiring one (1) additional year of gross receipt auditing. **Selectman Bastarache** stated that he would be willing to consider the request at the next three (3) year term negotiation of the agreement. **Selectman Bastarache** noted that the Town has transitioned to an annual audit cycle because of the size of the annual budget and the complexity of the organization, acknowledging the importance of an annual audit. The Board expressed agreement. The Board agreed to amend the October 30, 2017 3<sup>rd</sup> party wastewater agreement to include the revenue sharing table from the February 19, 2007, remove Section 3 in its entirety, and remove the wastewater receipt under section 10 (b), for a new three (3) year term. **Chairman Smith** made a motion to execute a renewed agreement with Erving Industries to allow for the acceptance and treatment of 3<sup>rd</sup> party wastewater with the following amended language from the October 30, 2017 agreement: modify section 5B to read the table from Section 4 of the February 19, 2007 agreement, to remove Section 3 in its entirety, to remove Section 10 (b) and to renumber sections accordingly, and to add language that would allow either party to request renegotiation of the agreement as long as both parties agree, with a three (3) year term ending June 30, 2022. **Selectman Bembury** seconded. **Vote:** Unanimously approved.

**Chairman Smith** made a motion to allow Erving Industries to continue operating the 3<sup>rd</sup> party wastewater operation under the under the new terms until a formal agreement is signed. **Selectman Bastarache** seconded. **Vote:** Unanimously approved.

Morris stated that the wastewater treatment plant staff have been working internally to see if they could offer to treat the Town's wastewater from POTW#1 at POTW#2. The Board agreed they would be open to a future conversation with Erving Industries if they requested it.

**Adjournment**

At 8:57 PM **Chairman Smith** made a motion to adjourn. **Selectman Bastarache** seconded. **Vote:** Unanimously approved.

Respectfully Submitted

A handwritten signature in cursive script that reads "Bryan Smith".

Bryan Smith  
Administrative Coordinator