

Town of Leicester  
Selectboard Meeting Minutes

Thursday, April 05, 2010

**\*Unapproved\***

**\*\* See subsequent minutes for any changes**

**Members Present: Diane Benware, Ron Fiske, Tom Barker, Ken Young, Bob Oliver**

**Others Present: Julie Delphia, Arlan Pidgeon, Kate Briggs, Cecile Todd, Jeff McDonough, Sandra Trombley, Secretary**

**Call to Order: Meeting called to order at 6:30 p.m. by Chair, followed by the Pledge of Allegiance.**

**Review of Agenda: Agenda reviewed.**

**Approve Minutes of March 15, 2010:**

**Motion by Bob to approve minutes of March 15, 2010 with correction under Executive Session misspelling of "statured" to "statuted". Second by Tom with correction. All in favor. So approved.**

**Recommendation by Tom to move the agenda around to let Pike representatives speak.**

**Paving Decisions:**

**Board wants to proceed with grant application even though there is a possibility of no grant money.**

**Board questions whether to go with recycled pavement or virgin mix.**

**Two Pike representatives gave a presentation about their 130 years of experience, quality control, certification of materials and certified flaggers. They explained the difference between recycled pavement and virgin mix. They brought samples of recycled pavement and virgin pavement.**

**Questions by board about proper mixing, weathering, cracking, fatigue.**

**Pike representatives read from the U.S. Department of Transportation Federal Highway Administration that the recycled asphalt hot mix is just as strong as the conventional mix and more resistant to water.**

**Tom recommended the Board move to continue deliberations. The Board thanked Pike's representatives for coming.**

**Meeting with VLCT:**

**Pam V. and Cindy B., Underwriter Manager. They are representing the VLCT Property and Casualty Trust. They came to help clarify questions and explain services they provide and coverage provided.**

**Their visit was prompted by questions that the Board had about volunteers who provide services for the Town. Also to deepen the Board's understanding of services VLCT provides and how the Town is covered.**

**Jeff McDonough serves on the ZBA, PC, Town Agent, Town Juror, and Constable. He presented some general questions.**

**Q: What are our liability limits?**

**A: Your general liability limit is 5,000,000. In addition, you have several other liabilities.**

**Q: Is there an umbrella over top of that?**

**A: No, it's just 5,000,000.**

**Cindy explained that as far as public officials and employment related practices liability, those are two other liabilities. There is 5,000,000 for that coverage too.**

**Diane asked, when you say public officials, that's whether we are the Selectboard, the Listers or whomever? And that's 5,000,000?**

**Cindy said "yes, acting in the capacity of the Town". "Yes, it's 5,000,000.**

**Q: Is there an aggregate?**

**A: There is no aggregate limit. It's unlimited.**

**Q: Looking at elected and/or appointed officials of the Town. Are there any ones excluded?**

**A: No, we have no exclusions.**

**Q: Are all the members of the Boards, elected and/or appointed officials of the Town included as additional insured's?**

**A: They would not be considered as additional insured's, but named insured's under the entity of the Town.**

**Q: So, the individual is an additional insured?**

**A: They are actually a named insured. A named insured is a better status than an additional insured. Named insured get's top-line status as how claims are handled. Additional insured means you have to go back to prove their insured status before a claim would be paid. Basically, a named insured is usually better.**

**Q: Let me ask you another way. Every individual on the Board right there is insured as an individual, correct? If the Town of Leicester is sued, you agree to defend the Town?**

**A: Right.**

**Q: If she is sued personally in her position as a Board member, you will protect and you will defend her as an individual?**

**A: As long as she is acting within the scope of her position with the Town, yes.**

**Jeff stated that's to be determined by a court of law.**

**Cindy agreed, stating that some people may be acting on the Town's behalf, but it may not be in their position description and they've gone outside of their description and then that would be a discussion to have with a claim's person.**

**Q: So, she is included as an additional insured?**

**A: I disagree; she is included as an insured.**

**Jeff skipped to Workers Compensation questions.**

**Q: Are any of the above that I have mentioned elected and/or appointed officials excluded?**

**A: Cindy answered, "No", but Pam said, "Yes". Elected officials are excluded except for the Town Clerk. Pam added it's not for the Town Clerk, it's except for an elected official who has to keep regular hours and have duties they perform at appointed times. This is according to the DOL. The DOL is the ultimate arbiter as to whether a person was an employee. We assume that Town Clerks and Treasurers and people who have to keep regular hours are employees.**

**Cindy stated that people who are getting payroll amounts are considered under workers comp, but the people who might get a \$200 stipend are not.**

**Q: This is all non ISO?**

**A: We are non ISO.**

**Q: The real question. I will give you a specific example. Prior to this meeting right here, I was at a zoning board site seeing. We were looking at a lot that was in question. If someone would have gotten injured, if I had stepped in a hole, broke a leg, fallen, whatever, what you just said, there would be no coverage for anyone there; likewise there is no coverage for anyone on this Selectboard. Is that correct?**

**A: If somebody was to get injured, we have a medical payments only clause that's part of the policy. They would be getting medical payments. You couldn't really give wage replacement because we are not really paying any wages to replace.**

**Q: Wage replacement is called a secondary under workers compensation.**

**A: If you are talking medical payments, we do offer a medical payments clause under our policy.**

**Q: Limited?**

**A: Yeah, limited.**

**Q: Which is probably \$500 - \$1000?**

**A: No, I think its \$15,000.**

**Pam stated that in regard to Zoning Administrators, she would feel most comfortable if she could look this up, but we have a thing where we ask on the workers compensation audit if they are elected or appointed and elected is not covered and appointed are covered.**

**Jeff asked if there is an option by putting under ISO; under an ISO written policy you can put a voluntary endorsement on.**

**Cindy stated that they are not an ISO written company and there is no ISO language for workers comp. It's all NCCI.**

**Jeff said he was talking voluntary endorsement which is normal when you are talking small towns, churches, etc. People do volunteer. You're looking at some here.**

**Q: So, what you are saying, under your particular coverage, that there is no workers comp coverage for volunteers and/or appointed officials.**

**Cindy understands what Jeff is saying about the endorsement, she is familiar with the NCCI version of that endorsement, but the way our Trust works, they need to be employees to be collecting workers comp. If somebody is volunteering but they look like an employee, and act as an employee, the courts could deem that they are really an employee they just haven't been paid or they have been paid in some other way, rather than monetary wages and then they would consider an employee, and they would collect workers comp. But, there is nothing for non-contributing.**

**Jeff stated he can't change anything, but people need to really realize what their coverage is and is not. The Board that he serves on, they are not paid. As he had just stated, they were just out on a site and if something would have happened, there would be no coverage under workers compensation. As these people, the Selectboard, are out on a site seeing or looking at road construction, or whatever, and someone gets injured, hit by a vehicle, hit by a car, see those are the things a lot of small town's do.**

**Q: Is there a way to put a voluntary endorsement under your policy?**

**Pam asked a clarifying question. When you say a voluntary endorsement, said another way, is that an endorsement to cover volunteers?**

**Jeff stated it's the same idea as if you wrote an; if any basis. Jeff explained he used to write insurance.**

**The reason why Jeff is asking all of these questions is because they are extremely important to an individual. It may not be until an attorney comes in and says to this**

**Town, you are sued because you made a comment, a slanderous comment or whatever. These are not exaggerations.**

**Cindy stated that they are owned by their members and local. They try to work with people and make things right.**

**Cindy stated she could look at his question on the voluntary endorsement and take it back to the Trust.**

**Julie asked for clarification on people that are not making wages. Everybody in this room does have some kind of coverage depending on the situation. It may be medical or liability and not necessarily workers comp.**

**Cecile asked about ugly dogs at properties where she does site visits as a Lister. Cecile would be covered under workers comp if she was attacked by a dog while working.**

**There was further discussion that there is a difference between liability, workers compensation, medical and health.**

**There was further discussion on voluntary endorsement.**

**Jeff explained that board members don't understand their coverage and believe they are covered under workers comp.**

**Kate asked a question about error and omissions and what coverage we have. Is defense offered?**

**Cindy explained that it depends on particular cases and the scope of their job. Defense is provided immediately. We start the process as if you're covered. It would be handled later if the person acted out of their job responsibility and the Town may have to reimburse VLCT.**

**Jeff requests in the interest of time, he writes a particular list of questions for VLCT and have Diane send to VLCT.**

**Cindy asked if there was an issue or particular problem with VLCT in general that needs to be addressed or just concerns on how coverage's would respond. Jeff explained that it's a combination of the two. People serving on boards are under the assumption they are personally covered with liability and workers compensation. If they got hurt during a site visit or they are out working in the capacity of the Town, volunteering or working as an elected or appointed position, and you are saying, "no".**

**Q: Is vehicle coverage for the Town ACV?**

**A: Yes**

**Q: Is there non-owned automobile coverage?**

**A: Yes, we would jump in as excess.**

**Pam stated with certainty in regard to elected officials and the workers compensation issue, the primary concern for most boards is errors or omissions that with VLCT everyone is on the commercial blanket Fidelity and Faithful Performance Bond. There are no exclusions in the bond.**

**Pam would like to check with their claims department to see how often there are claims for workers compensation for boards. As far as she knows there is not a large exposure.**

**Diane also explained that people come on the Board assuming things, and rather than having something come back and be bitten by it, it's good to know what you are and are not covered for. On a personal level, we appreciate knowing that and also on the bigger level it is important for us to know the limits the Town does have so when she and Julie complete the application they know whether to ask for more coverage or not.**

**Cindy shared a copy of the Property and Casualty Coverage policy and Workers Compensation Coverage.**

**Cecile brought up the Vermont Sun sponsored bike triathlons that are held on the back side of the lake.**

**Cindy's advice would be to collect a certificate of insurance and list the Town as insured. Pam also stated an element of exposure negligence that the Town would want to be sure that there were no gaping potholes or any holes be coned off or filled.**

**Review and Authorize Payment of Bills:**

**Bills making their rounds for signatures.**

**Weight Permits:**

**Arlan reviewed weight permit. Bob and Ken signed permit.**

**Reports from Town Officials, Committees:**

**Town Clerk/Treasurer:**

**Delinquent taxes are right around \$56,000.**

**Dog licenses are at 188. They should be in the 200's somewhere. Julie has a list to give to Brian Webb.**

**Last year Brian had some difficulty being able to come down to actually go to places. She doesn't know if that is the situation this year or not. Julie feels we really need to push to get Brian down here this year because it's really slow.**

**Action: Diane will contact Brian.**

**There is a petition in the works around Town for you to consider an Animal Control Ordinance other than dogs.**

**Julie clarified that at the next meeting you will be talking about Maple Street. Julie will be asking all the landowners to come to that meeting and to think of names and suggest names. The Board anticipates making a decision that evening.**

**Friday we met with Tom Roberts and finished the financial plan for the grant. That has been signed and he has a copy.**

**Julie stated that we need to schedule another Board of Abatement meeting to follow up on the last one.**

**Tomorrow NEMRC is coming down to work on networking the computers. Listers will be able to work on more than one computer and they will be connected to Julie so she gets notified of any changes that affect taxes.**

**Julie gave the Board copies of the budget as of today for Board's review.**

**VLCT's Workers Compensation audit for 2010 was sent up. They will review and send her for evaluation prior to finalization to avoid issues such as last year. She has not heard from them yet.**

**Listers:**

**Cecile talked about her discussion with Terry, their State Advisor, about the Board of Abatement Meeting.**

**Action: Julie will call the Secretary of State's Office and get clarification if one means all.**

**Kate and Cecile went to a class about preparing a grand list and NEMRC.**

**Kate explained about the training in a little more detail.**

**Zoning Administrator:**

**Kate has been working as a volunteer with the PC with steps to revise our expired Town Plan. Our zoning by-laws need to be changed.**

**There is planning money again and the deadline for applying for the grant is April 30<sup>th</sup>. Donna Swinington and Kate met with Claire Tebbs at Regional Planning. The grants are extremely competitive. They are hard to get. We have to write a very good grant application. We worked out some ideas on how we can be competitive and have a Town Plan that fits with our Town, balancing the fact that we are a mixed use town with seasonal lake property and people who live and work here.**

**We got 60 responses from our survey from year round residents who came to vote. 75% said yes to zoning.**

**Motion by Tom to authorize the Planning Commission to apply for Municipal Planning Grant to update the Town Plan and the Zoning by-laws. Pursuant to the requirements of the State we appoint Diane Benware and Ron Fiske to be authorizing officials. Second by Ron. All in favor. So approved.**

**Motion by Tom to appoint Kate as an alternate to the Planning Commission. Second by Ron. All in favor. So approved.**

**Selectboard signed the Certificate of No Appeal or Suit Pending document.**

**Road Foreman:**

**Gordon Marsh on Stove Pipe wants a new driveway culvert. Arlan couldn't see one, but Mr. Marsh thinks there is.**

**Motion by Tom to authorize Arlan to put in a 12", 30' metal culvert to Marsh driveway. Second by Ken. All in favor. So approved.**

**Discussion on duties of Road Foreman and Road Commissioner.**

**Grading was done on Thursday, April 1st and Monday, April 5<sup>th</sup>.**

**Town received 140 yards (20 loads) of free gravel from Markowski.**

**Cemetery Committee:**

**Tom reported they will be meeting Thursday night.**

**New Business:**

**Nuisance Dog Concerns:**

**Kate wanted to mention that the State Legislature passed agriculture exemptions last year for farm dogs and other farm animals. Farm dogs are not subject to Town leash laws. 100 chickens makes you a poultry farmer, 4 horses makes you a farmer.**

**Julie mentioned that the dog must be registered in the Town as a *working farm dog*. There is no dog, at this time, registered in this Town as a working farm dog. There is a statute that explains how to register as a working farm dog and there is a different fee for this.**

**The board reviewed the Town's Dog Ordinance.**

- **B. Dog barking excessively**
- **C. Dog running at large**

**Julie stated that anyone coming in to register a dog that has never registered in the Town of Leicester before, she gives them a copy of the Dog Ordinance recommending they review it carefully about our leash law and nuisance dogs.**

**Action: Julie will request Brian Webb to come in for our next meeting to discuss dog issues/ordinance.**

**Other:**

**Jeff McDonough explained a problem he is having with his driveway. He asked if the Board could come out and look at it. He has spent lots of money each year to repair it with loads of gravel. The water washes it out. He would rather not keep paying for it.**

**Motion by Tom to authorize Arlan and Road Commissioners to meet with Mr. McDonough to discuss possible solutions to the problem. Second by Ron. All in favor. So approved.**

**Old Business:**

**Steps on Meeting House:**

**Bob Morin provided a quote of \$3,935 which does not include taking out stairs. Discussion on prior quotes and style of the steps.**

**Discussion on writing a grant through the Vermont Community Foundation to help pay for the steps. Walter Cerf is part of the Vermont Community Foundation.**

**Carrara, Griswold and Carroll do not do pre-cast steps the size we want.**

**Action: Diane will look into other companies and report back on the 19<sup>th</sup>.**

**Action: Bob will talk with Peter and have Peter come look at steps.**

**Paving Decisions:**

**Motion by Tom to award the paving bid to D&F using virgin materials, price not to exceed original bid. Second by Ron. All in favor. So approved.**

**Action: Diane will send letters to other paving contractors explaining they did not get the bid.**

**Common Level of Appraisal Update:**

**We requested the Vermont Department of Taxes to review the CLA. Individuals came down. They added a couple of sales and deleted a couple of other sales. Our CLA has dropped to 97.69 from 99. They have scheduled a hearing for Monday, April 19<sup>th</sup> at 2:30 p.m. Cecile will call the State for clarification on E's and O's and more and information where it's being held, Montpelier or hear. Diane or Cecile cannot go to Montpelier on that date. The hearing will need to be rescheduled.**

**The Board is not ready to sign the document because they are not accepting the results because they are not exactly sure what they mean and it doesn't appear that they followed their very own reasons to eliminate.**

**Continuing Board of Abatement Deliberations:**

**Continuing Board of Abatement Meeting, Monday, April 12, 2010 at 6:30 p.m.**

**Green Up:**

**Motion by Bob to authorize Lem Palmer to pick up Green Up for same as last year. Second by Tom. All in favor. So approved.**

**Limited Public Opinion: None**

**Executive Session:**

**Motion by Tom to go into Executive Session about personnel at 9:35 p.m. Second by Ron. All in favor. So approved.**

**Motion by Tom to come out of Executive Session at 9:46 p.m. with no action taken. Second by Bob. All in favor. So approved.**

**Motion by Ken to adjourn at 9:46 p.m. Second by Bob. All in favor. So approved.**

**Next regular meeting, April 19, 2010, 6:30 p.m.**

**Respectfully submitted,**

**Sandra L. Trombley, Selectboard Secretary**