

Submitted by: TOWN OF PHIPPSBURG Approved by Selectmen:
SELECTMEN'S MEETING
John M. Young MINUTES
Administrator September 5, 2007

Meeting convened at 6:00 p.m. with Selectmen Perkins, Pye and Douglass in attendance.

I. Review and Sign:

1. Accounts payable and payroll warrants.
2. Minutes from prior meetings.
3. Pole Permits for Stoneybrook Road

All items reviewed and signed.

II. Meetings and Hearings:

1. Meet with Nancy Sferra and Will Brune from the Nature Conservancy for an update on the Basin Preserve.

The Selectmen were given a written Basin Preserve update.

Trash: Ms. Sferra reported that they had taken 20+ loads of trash to Transfer Station from the Basin Preserve, including a recent load of shingles that someone had illegally dumped. There have been no televisions or computers dumped at the "Green Piece" or "Car Wash" since signs have been installed and she has found few ammo shells, however they are having to replace the signs every week. She has been very happy with way people are treating the property and they have good communications with the Town. Also, the Transfer Station attendants have been very cooperative.

ATV Trails: Ms. Sferra reported on the trail mediation and reroute work that has been accomplished with the assistance of the Winnegance Wheelers. Someone has stolen the metal plates used on one of the ATV trail water bars. She added that ATV's can use the old mica mine trail to access Fuller Mountain and recommends use of the Basin Road. A 1,000 foot section of ATV trail to the "Green Piece" has been closed because of sediment going into stream. They are starting to work on the Denny Read Trail.

Roads: She reported that the Patriots Day storm damaged culverts along TNC sections of the Basin Road and they have other culverts that are not functioning properly. There are grants available through USDA/NRCS for culvert analysis and replacement. They have already submitted applications for the program. TNC can also apply for funding to replace culverts under town roads to enhance stream protection as well as moving roads which are next to a stream (i.e. Falls Cove). Autumn Birt from the Natural Resources Conservation Office in Lewiston conducts analysis of culvert sizes. The program for Town roads would require a 25% grant match, which could be matched in kind by using Town equipment and personnel. Basically, many of the road culverts need to be longer and

larger.

Misc. Items: Ms. Sferra reported that she has contacted a surveyor to clarify a boundary line and is currently drafting a fire history of pitch pines.

Selectman Douglass stated that the trash is probably from outside of Town and recommended that she let Chief Skroski know if there is any type of ID on refuse that she finds in the Basin. He also didn't think that TNC would use grates on their trails because of horses and Ms. Sferra replied that she would check on it. Selectman Douglass also asked if TNC would be leaving room for trailers to park at the "Green Piece" to which Ms. Sferra replied that they would place the boulders 10 feet off the road to allow parking for the trails.

Selectman Pye stated that the Town has traditionally maintained a section of the Basin Road which is owned by TNC because it was used by the public. Ms. Sferra replied that the section was not in as good a shape as the rest of the road owned by the Town and that TNC would be willing to give that section of road to the Town. Selectman Douglass added that a survey would have to be done and the Town would have to vote to accept the section at a Town Meeting. Selectman Pye also inquired about the Town's gift of land which is part of the donor/TNC agreement. Ms. Sferra replied that Will Brune was aware of the donor's intent to have TNC gift up to 60 acres of the Basin Preserve for municipal purposes. She added that if the Selectmen have something in mind to let TNC know and the request does not have to be made within any time frame. Selectman Perkins stated that the "Green Piece" would make a good location for a new school.

Selectman Perkins asked what the formula was that TNC used to establish the \$10,000.00 figure to pay in lieu of taxes. Ms. Sferra replied that there was no formula – they simply make an offer. She added that next years amount will probably be the same and if the Town had an alternate way of figuring the amount to let them know. Will Brune would rather see the amount earmarked for a specific purpose rather than just to reduce taxes.

Road Commissioner Doughty asked if Autumn Birt would survey other Town culverts. Ms. Sferra replied that the culverts would need to be of high quality wildlife importance. Commissioner Doughty will compile a list of culverts which fit the criteria.

2. Meet with the Road Commissioner and Road Committee Chair concerning a certified letter from Michael Rice in regards to the rebuild of the Parker Head corner.

Town Administer Mike Young gave a briefing which is attached to these minutes.

Selectman Douglass stated that you can make every road safer, but cannot make them accident proof and there have been more accidents in front of Pine Tree Service Center and at the Center intersection of Parker Head Road and Route 209 then on this corner. People who travel at the proper speed, based on road conditions, have no problem making the corner. He added that the Selectmen had intended to fund this project

earlier but the Town had the County Jail to fund.

Sherri and Dave Jacobs, whose son was involved in an accident on the corner, stated that it is an issue when innocent people are traveling around the corner and get hit because of speeders. You can't see the warning signs on the right side when heading north into the corner – the signs on the village end are fine. They would like to see more warning signs and better placement of them.

Les Smith, Chair of the Road Committee, stated that the signs currently installed are in compliance with State DOT requirements, however another sign (Reduce Speed) could be added 150 feet back on the northbound side. He also stated that the Town Road Crew could probably do the construction work as long as there is a certified centerline profile from Pine Tree Engineering.

Selectman Pye stated that the problem is that some people won't follow signs. He recommended a 90 degree turn sign.

Selectman Perkins stated that he is always careful when driving on Parker Head Road.

Action taken: (1) Chief Skroski, Les Smith, and Commissioner Doughty will decide what additional signs to post; (2) Administrator Young will arrange for Pine Tree Engineering to evaluate the corner and give estimates on engineering costs; and (3) an article for funding will be submitted for the May 2008 Town Meeting.

Selectman Douglass asked Commissioner Doughty for a project report on the Cranberry Point Road and Fort Baldwin Road. Cranberry Point: He replied that all the ledge had been removed and they are progressing. Fort Baldwin: We have received the approved DEP permit back.

3. Meet with Clarke Cooper concerning a letter of non-enforcement for a dock that was built on Map 027, Lot 002 in 1999.

Mr. Cooper had received a permit to build a dock and it had expired by the time the dock was built. The Selectmen voted (3-0) to accept a consensual payment of \$140.00 (cost of issuing an updated permit after the fact) and in return will not take any enforcement action.

III. Correspondence

1. Letter from MMA concerning Risk Pool Dividends.
The Town received \$688.00 for its Risk Pool Dividend.
2. Letter from MMA concerning amendments to By-laws.
Reviewed. No action taken.
3. MMA Annual Business Meeting.
Reviewed. No action taken.
4. Transfer Station Monthly Report
Reviewed. No action taken.

IV. Courses and seminars

1. Jensen and Baird Client Seminar
Various officials will attend.

V. Selectmen/Administrator Comments and Announcements

Administrator Mike Young:

Announced that the new Fire Tank Truck had arrived and announced upcoming meetings.

Selectman Perkins:

Mentioned that the Sheriffs Department assisted the Town by providing two jail inmates to clean up the debris left over from demolishing the Danish's house on Fiddlers Reach Road. Lee Rainey, CEO, added that the nuisance has been abated. Selectman Douglass asked Mr. Rainey to contact the responsible parties concerning the demolition of a second building on Fiddlers Reach Road belonging to Lois Pendleton. The building is unstable and is housing vermin.

VI. Adjournment - Selectmen voted (3-0) to adjourn at 7:15 p.m.

Parker Head Corner Points

Liability

As per conversations and e-mails with the Town Attorney and DOT the design of a road really does not fit under the "Road Defect Statute". That Statute is for issues such as pot holes, obstructions, missing guardrails etc. – not road design. **Both agreed that, in their opinion, road design does not fall under the definition of defect.** This is not to say that a claim could not be filed – however the chances of it succeeding in court is minimal. Even if it was considered a defect the notice of claim would have to be filed within 180 days by the person receiving the damages or bodily injury, and if they win the judgment the limit is only \$6,000.00 (this does not apply to cases where the defect causes a death).

Note: Late addition from MMA. They state the following: "I'm writing in response to your email and fax received yesterday by our office. You are correct in your understanding of the Highway Defect Law found in 23 MRSA sections 3651-3655, as discussed in MMA's *Roads Manual*. **A dangerous curve or similar design issue is not a "defect" for the purposes of the 24 hour notice requirement and the town's liability under that law.** The word "defect" has been interpreted by the court in a number of cases to mean objects allowed to remain in the road, a lack of repair such as with a pot hole, heave or crack, or the lack of a sufficient guardrail next to a steep drop off; it means a condition that can be remedied fairly quickly and reasonably in light of the 24 hour notice period."

Accident History

As per Sagadahoc files - there have been 7 reported accidents on that corner since 1993 (14 years). Four involved motorcycles and three involved cars. One accident report does not list a cause – however the rest are attributed to imprudent speed for road conditions (rain or snow), high rates of speed and in some cases of motorcycle operation – driver inexperience. **None were contributed to road design.** As Pete Coughlin stated from DOT – "You cannot engineer for or prevent drivers who do not drive for the conditions".

Signs

DOT reviewed the signs on all the Town roads last year. The signs for the corner are in accordance with DOT requirements. If someone is traveling the speed limit, or in accordance with the road conditions, and adheres to the warning signs the corner is not a problem.

Timeline

May 2004 - The Town acquired the property to rebuild the corner from Bob Cushing.

Annual Report (2003) – Selectmen's Report (when Mike Rice was on the Board) the Selectmen reported that they would be reviewing the surplus in the fall and MAY call a special Town Meeting to fund construction in FY 2005.

Annual Report (2004) – Road Committee Report – Stated that the rebuild would be a separate warrant article and it was recommended that funding be delayed until the 2007 budget cycle when the Town's share of the Popham rebuild project was known to see if the unspent balance in the Town's State Aid Account would be sufficient to fund the project. **(Note: The Popham project cost was not final until April 2007 – which was too late to take into consideration for the 2007 or 2008 budget cycle).**

Annual Report (2005) – Parker Head listed as a delayed project. **(Note: Waiting for Popham Project)**

Annual Report (2006) – Parker Head listed as a delayed project. **(Note: Waiting for Popham Project)**

April 2007 – Popham Project cost final.

Misc Comments

Pete Coughlin (DOT) stated that this issue does not relate to the Tort Claims Act because that act deals with negligence in operations and work activities. He also stated that it would be difficult to argue that this particular ledge section is different than a good part of any coastal town that is built on ledge, however if this section of road is a common problem area, he would strive to fix it sooner than later.

Rick Hornbeck (Town Attorney) recommends that you declare: (1) that the road could be made safer as most roads can; (2) that the corner is currently safe as long as a person travels at the posted speed limit and at a prudent speed taking into consideration the existing road/weather conditions; (3) that the corner is properly posted; (4) what your future plans are for the corner (i.e. will rebuild when funds become available or whatever).

Mike Rice was Selectman through May of 2006 and was involved with the decision making process for Parker Head Corner.

Estimated cost for blasting in 2002 was \$14,000.00. In addition, construction costs at that time were expected to exceed \$80,000.00 and we already paid \$5,700.00 to obtain the property from Mr. Cushing. Any change in road alignment which will cost over \$100,000 must be designed/certified by a Professional Engineer.

Future Plans

1. Although the posted signs meet the DOT requirements several more will be installed for northbound traffic to give more warning of the corner.
2. As stated in the 2004 Annual report – now that the cost of the Popham rebuild is known (and paid) a warrant article will be on the May 2008 Annual Town Meeting to appropriate funds from the State Road Account for the Parker Head Corner Rebuild (amount available at the end of FY 07 after receiving the annual \$44,000 from the State should be \$126,000 - estimated costs for the rebuild are in the \$100,000 range).
3. Mike Young will contact Pine Tree Engineering to get an estimate on Engineering costs for the corner. Once received a decision will be made whether to start the design work prior to the Town Meeting so that a firmer estimate will be available.