

**MINUTES
SPECIAL TOWN MEETING
APRIL 3, 2017**

A special town meeting of the electors and those qualified to vote at the town meetings of the Town of Lebanon was held on Monday, April 3, 2017 at Lyman Memorial High School 917 Exeter Road. Audience 51

First Selectman Betsy Petrie called the meeting to order at 7:36 PM.

The meeting was opened with the Pledge of Allegiance.

First Selectman Betsy Petrie then called for nominations for moderator.

Moved by John Bendoraitis, seconded by Glen Coutu, to appoint Bob Gentes as moderator. Vote called – Motion passed

Moderator Gentes reviewed Town Meeting protocol and rules.

Moved by John Bendoraitis, seconded by Glen Coutu, to wave the reading of the call of the meeting. Vote called – Motion passed

Moved by Glen Coutu, seconded by Mike Nintean to bring item 1 to the floor. *“Consider and act upon the purchase of a new ambulance in the amount of \$193,421.00, funds to come from Capital-Account #220-00-422-2715-0020.”*

Selectman Glen Coutu spoke to the question as follows: The town’s ambulance is controlled by the Fire Department and is on a replacement schedule of six to ten years. This is a fairly regular process and does not happen annually. A number of years ago, when the town established and adopted a program for the ambulance, the funds that were collected were set aside into a special fund. It was not only used to operate the ambulance service of the fire department, but also set aside as dollars to replace the ambulance when it needed to be replaced. The Fire Department will speak to the ambulance, and then Diane Malozzi from the Board of Finance will explain the funding piece.

Mark Elliott, President Lebanon Volunteer Fire Department spoke to the question as follows: The Lebanon Volunteer Fire Department Inc. is a private organization separate from the town which provides a service to the town. The town owns the equipment and the town owns the fire house. The current ambulance in service is a 2010 model with about 63,000 miles. There is only one ambulance and is heavily ridden. The replacement strategy is utilizing money put into a recurring fund, not a line item, which accumulates over time coming from the Paramedic portion of the billing which is billed out for the service. The town does not provide an operating budget for the ambulance. The ambulance operation is funded by the Fire Department through revenue from ambulance billing to the insurance companies for calls that are made. A portion of the money goes into the emergency services fund which accumulates. The current proposal is to purchase an ambulance from Eastford Fire and Rescue in Eastford Connecticut. We have made an arrangement with the owner from that organization similar to the last ambulance. A demonstrator ambulance was purchased, which means it has low miles on it. An arrangement was made with the owner in which we order an ambulance which is built to our specs. The owner holds onto it for a few months and show it as a demonstrator allowing departments to test it. It would then be sold to us at a demonstrator price representing about a ten percent discount. This ambulance spec would come in about \$200,000 to \$220,000.00. Equipment from the current ambulance will be moved into the new ambulance to keep the cost down. Not reflected in that price are rebates back from the manufacturer which could be a minimum of \$7,000.00 and could be up to \$12,000.00. The price could be less than that at the time of purchase. These rebates come back to the purchaser, which is the town, after the sale so this cannot be reflected in the purchase price. The money in the fund does cover the

purchase. No new money will be used to purchase the ambulance; only the money in that fund account.

Susan Brett-Davis: What will be done with the old ambulance? Does it get sold to somebody and then the money goes back into the fund? Or will it be kept as a spare?

Mark Elliott responded as follows: The old ambulance will not be kept as a spare because the department would have to get an additional license from the State. We get a license for one ambulance at a time. If the vehicle is kept, it would be kept for other purposes like a utility vehicle. It could not be used as an ambulance. It is owned by the town and what we have done in the past is to sell it on a secondary market. Eastford Fire & Rescue has agreed to sell it for us. It will not be bought by them, but Eastford will arrange the sale. It is thought it could be sold in upward of \$20,000.00, if they do sell it as a used piece. It is a town owned vehicle and the money would go back to the Town. The Finance Board and Selectmen would determine where the money is allocated.

Diane Malozzi, Board of Finance member, spoke to the question as follows: The cost of the new ambulance is \$193,421.00 money coming from the Emergency Services reserve account. The account currently has a balance of \$194,308.43. The account is funded through ambulance calls. The Fire Department gives the money to the Town and the money is put into this account which is an account that accrues. This account has only had three vouchers against it since 2007. Rebates that do come back, would go back into that account. The sale of the existing ambulance would be discussed by the Board of Selectmen and Board of Finance.

Moved by Fran Malozzi, seconded by Kathleen Smith to vote by show of hands. Vote called: Motion passed

Moderator Gentes called the question. "Consider and act upon the purchase of a new ambulance in the amount of \$193,421.00, funds to come from Capital-Account #220-00-422-2715-0020."

Vote called by show of hands: Motion passed 1 Abstention

Moved by Betsy Petrie, seconded by John Bendoraitis to bring item 2 to the floor. *"Consider and act upon rescinding Ordinance entitled "Board of Education Full Election of Membership" dated March 25, 2008."*

First Selectman Betsy Petrie spoke to the question as follows: In the municipal election that occurred in November 2015, there was a challenge specifically with a Board of Education seat in which a minority representation matter that had to be resolved with the person not receiving as many votes as the top three vote getters. When the Selectmen looked at this ordinance adopted in 2008, it was learned it sights the incorrect state statute in the ordinance. With the advice of Town Counsel and review of the Board of Selectmen, it is the Board of Selectmen's recommendation that the Town rescind this Ordinance.

Moved by Betsy Petrie, seconded by John Bendoraitis to vote by show of hands. Vote called – Motion passed.

Moved by John Bendoraitis, seconded by Mike Nintean to call the question. "Consider and act upon rescinding Ordinance entitled "Board of Education Full Election of Membership" dated March 25, 2008."

Vote called by show of hands – Motion passed.

Moved by Joyce Okonuk, seconded by Tom Meyer to bring item 3 to the floor. Consider and act upon *"Repealing the existing ordinance entitled "An Ordinance regarding the Approval of Capital Projects" dated May 4, 2009 and replace with "An Ordinance regarding the Approval of Capital Projects".*
(a copy of this proposed Ordinance follows these minutes)

First Selectman Betsy Petrie spoke to the question as follows: The purpose of the proposed new ordinance is to clarify that any capital project with an estimated tax impact in excess of 5% of the Mil Rate, is what the current ordinance states. The new

ordinance will clarify it to be 5% of the amount to be raised by taxes, which is exactly how the town budget documents are posted. Additionally, the ordinance speaks it to being set forth in prior year's annual budget. This language will become very clear as to what the amount the dollar figure is. Second, it will provide some flexibility as to when a capital project must be presented for the town and/or referendum. It provides the town an opportunity to delay a project until the town is better informed by the State as to funding circumstances. For instance, in the current budget that the town is trying to assemble, it is extremely likely we will not know the revenue from the State, as it may not be announced until late April. This puts any capital projects in-flux, so the town is unable to budget appropriately and inform the residents clearly as to what the expected impact will be. This flexibility will allow the Board of Selectmen to continue to work with the Board of Finance to include projects at the same time as the budget and include accurate information. The proposed ordinance has been reviewed extensively by Bond Counsel and Town Counsel. This new ordinance also gives the town the opportunity for any capital type projects to not only come at the annual town meeting, but any town meeting at which 100 or more residents sign a petition for that project to come to a town meeting. The new ordinance will provide options to the Board of Selectmen if we have capital projects that are necessitated that need approval in a time at which we are uncertain with our funding from the State.

Tom Meyer, Bogg Lane - Commented that the new ordinance will provide much more flexibility. It needed flexibility to coordinate what capital we need for the town and funding opportunity from the State. The present ordinance does not allow this, and we could be passing up funding opportunities. The new ordinance would provide this.

Moved by Fran Malozzi, seconded by Kathleen Smith to call the question.

Moved by Betsy Petrie, seconded by Tom Meyer to vote by show of hands.
Vote called – Motion passed

Moderator Gentes called the question: "Consider and act upon Repealing the existing ordinance entitled "An Ordinance regarding the Approval of Capital Projects" dated May 4, 2009 and replace with "An Ordinance regarding the Approval of Capital Projects".
Vote called by show of hands - Motion passed.

Moved by Betsy Petrie, seconded by John Bendoraitis to bring item 4 to the floor.
"Consider and act upon Granting non-exclusive easements for ingress and egress and utilities in and over a strip of land owned by the Town, formally known as Perry Road, to Vincent T. Savalle and Teri J. Davis and also to John R. Hilzinger. Said easements shall be approved as to form by the Town Attorney."

First Selectman Betsy Petrie called upon Gerold Stefon first to discuss the matter. In addition to Mr. Stefon, the Town Planner, Town Counsel and also Attorney Holley representing John Hilzinger are present to speak on this matter.
(a copy of the map follows these minutes)

Gerold Stefon, is a licensed land surveyor and also researches historical land records and town meeting records. Mr. Stefon also specializes researching town road. He spoke to the question as follows:

This is a situation going on about 80 years. Mr. Stefon outlined the properties on the map projection *(a copy of the map follows these minutes)* The Hilzinger proeprties are about 170 acres and the Savalle/Davis property is about 6 acres. This lot is a 6-acre lot located on the southeasterly side of a discontinued public road known as Perry Road. Their lot was created in 1919, but it has never been built on. They have, however, sought to obtain a zoning permit for this lot since 2005. They are now before the Town with a request that it convey to them an easement over town owned property which is the road known as Perry Road, so that they may realize their goal.

Perry Road extends easterly from Sullivan Road and the Lebanon/Colchester Town Line, approximately 0.7 miles to Taylor Bridge Road.

Sullivan Road is a town accepted road in Colchester. Though the easterly 800 feet is no longer maintained by the town. The roadbed is easily passable and in good condition

The roadbed of Perry Road is owned by the Town of Lebanon, it was conveyed to the “Inhabitants of Lebanon, their heirs and successors forever” by warranty deed recorded in Lebanon Land Records on June 28, 1769.

There is no evidence of record that this roadbed was ever conveyed by the Town of Lebanon to any other entity since its acquisition.

Mr. Stefan explained that town roads are, first and foremost public easements, or, public rights-of-way. When colonial era roads evolved, their roadbeds were often deeded to the town, but nearly as often they remained private. The courts in Connecticut operate under the presumption that all roadbeds are privately owned, but like all presumptions, it is deemed to be a “rebuttable.” If it can be demonstrated, through land record and town meeting record research, that the roadbed was severed from the adjoining parcels and conveyed to the town, such as in the case of Perry Road, ownership of the roadbed would remain vested with the town until such time as it was conveyed.

When a town decides to eliminate a public road, or right-of-way, they can accomplish that goal in one of two ways. Either, they can cease to maintain the roadbed for an extended period of time, usually 60 years or more, this is called an “abandonment.” Or, more commonly, they can hold a special town meeting and vote to legally “discontinue” the public right-of-way.

During a Special Town Meeting held on July 21, 1937, the Town of Lebanon voted to “close Perry Road.” The use of the word “close”, and not “discontinue” created confusion as to whether Perry Road was being closed for repairs, or whether the town meant to extinguish the public right-of-way. This debate lasted for 72 years.

The issue was first revisited at a Special Town Meeting held on May 8, 1978, when a motion to “reopen Perry Road” was defeated, but its status not fully discussed.

Subsequently, on December 10, 2002, at a Special Town Meeting, Perry Road was formerly “discontinued.” The seemly put the issue to rest. However, it didn’t.

Unfortunately, the status of Perry Road was destined for litigation and was brought to trial in 2009 before Judge Hendel in New London Superior Court, where it was decided that the town vote taken in 1937 to “close” Perry Road” effectively extinguished the public right-of-way, and took precedence over the vote taken in 2002 to “discontinue” Perry Road.” This decision was later upheld by the Appellate Court.

Mr. Stefan explained why the date of discontinuance is important stating that historically, when public roads were discontinued, they left behind interior tracts of land that were very difficult to legally access. So, in an effort to rectify this problem, the State of Connecticut, in 1959, enacted Statute 13A-55, which stated:

13A-55 (1959) “Property owners bounding a discontinued or abandoned highway, or a highway any portion of which has been discontinued or abandoned, shall have a right-of-way for all purposes for which a public highway may be now or hereafter used....to the nearest or most accessible highway...” In effect, Statute 13a-55 created a private easement in favor of every landowner owning land along a discontinued highway.

However, Statute 13A-55 was not a retroactive statute, it only applied to roads discontinued after 1959. Therefore, Judge Hendel’s decision, that Perry Road had been discontinued in 1937, and not 2002, effectively denied Teri Davis and Vinnie Savalle a private easement over the Perry Road roadbed, specifically an easement for the installation of utilities.

Unfortunately, utility companies will not install public utilities outside of a public right-of-way, unless an easement is provided to them. The Town of Lebanon, owner of the Perry Road roadbed is in a position to grant such an easement. The wording of this

easement has been tentatively approved in general terms by Savalle/ Davis legal counsel and by Town of Lebanon legal counsel. It has been reviewed and approved by Eversource and the Lebanon Board of Selectmen. Furthermore, it was reviewed as required by Statute 8-24, by the Planning and Zoning Commission, which determined that the easement was in compliance with the Lebanon Plan of Conservation & Development.

This easement will apply to those property owners located along Perry Road who are not abutting a public highway, John Hilzinger and Davis/Savalle. This easement, would in turn, be assigned by the property owners to a utility company such as Eversource. If conveyed by the town, this easement will result in a total, potential of only three new residential building lots located on 170 acres of land. It will not now, or in the future, result in the creation of any new subdivision, or return Perry Road to the status of being a public highway. The Savalle property will still need to meet driveway requirements in the Town of Colchester, and site plan requirements in Lebanon before a building permit can be granted.

Furthermore, the care, maintenance and improvement of this roadbed will not be the responsibility of the town, and the town will be held harmless from any liability connected with the exercise of rights connected with the use of this easement.

In a letter dated June 26, 2014, Donald R. Lee Jr., Deputy Fire Chief of the Colchester Fire Department, confirmed that his department has agreed to provide automatic aid, fire and emergency medical services to these properties.

Finally, the last step in this process, is for the legislative body in Lebanon, as represented by a Special Town Meeting, vote to convey this easement to the landowners.

Attorney Jeffrey Holley representing Mr. Hilzinger spoke to the question as follows: There are over ten years of litigation represented here. Mr. Hilzinger has been sued a couple of times, and there are now two Appellate Court decisions. Mr. Hilzinger did not create this problem. There are discovered responses from initial litigations that Mr. Savalle and Ms. Davis knew they had an access problem. Mr. Hilzinger has spent close to \$180,000.00 defending himself against an easement claim over property we were told we owned. The Appellate Court has said in their decision that this is no longer a public road. The town now accepts, despite its previous position repeated in writing, that it doesn't own the road. Now the town accepts that it does. The situation is now after all these years there is now going to be a vote on a potential easement. The property owners involved knew they had an access problem, they knew it when they bought it and knew it when they took title to it. My client has endured the brunt of the focus of this problem. In order to get access, they would have to go after Mr. Hilzinger who is a taxpayer and property owner in town. He has been defending himself since about 2008. It has gone to court, judges have seen it, the Appellate court has looked at it twice and there was a petition for a new trial based on alleged new evidence. We are dealing with the potential easement to be granted, eliminating all the work done here. The Appellate Court in the State of Connecticut confirmed that the public right of access over Perry Road was completely eliminated and discontinued. We are left with a private easement over what people are calling Perry Road. There are chunks out of the road making it completely impassable. What will the Town of Colchester do when they are presented with a request for a building permit over their land as there is nowhere to go? Coming out Perry Road toward Taylor Bridge, you cannot even drive on it. This Savalle/Davis lot was created in 1919, a carved-out lot. The Town put this on these property owners to work it out despite written opinions from 2001 and 2002 that the town thought they didn't own it and wanted nothing to do with it. Now they claim they own the property and want to grant this easement. This does not seem fair nor does it seem right. I want you to take this into consideration.

Attorney Ed O'Connell, Town's Counsel spoke to the question as follows: The summaries by Mr. Stefon and Attorney Holley are generally correct. Much of the litigation was conducted under the premise as recited by Mr. Stefon, unless shown otherwise, the presumption is the highways are private roads rather than owned by the Town. Mr. Stefon has presented evidence in the form of deeds and his formal opinion, that the strip of land formally known as Perry Road is a piece of land which was deeded

to the Town. This information was only recently conveyed to the town and has changed the posture of this case. Now the town has been told by a competent person that it owns the land and it was not a private highway that was in dispute between prior property owners. The town is being asked to consider granting an easement in favor of both Savalle/Davis and Mr. Hilzinger. Several factors should be considered on the part of the Town. First, these easements would be non-exclusive, each to the other. Either one of these people Savalle/Davis or Hilzinger cannot exclude the other from making use of the easement. They would be able to install and maintain utilities and pass and re-pass by vehicle and on foot. If the Town were to grant an easement to each of these, quit claim language would be utilized. It would not use Warranty language and would not guaranty the town owns the land. The town would be acting upon the opinion of Mr. Stefon. There would be hold-harmless and indemnification language in the easements so if the town were to be involved in any claims or litigations, the property owners would have to hold-harmless the town and indemnify the town of any expenses. There would be a particular provision in the easements that the town would not be held responsible for any maintenance or upkeep of this strip land. This is a granting of an easement for the installation of utilities and passage and re-passage. The town would reserve the right to make any use of the land it owns without interfering of the easement of utilities and passage and re-passage. These would be the provisions in each of the easements should the town meeting vote to grant them.

Moderator Gentes opened the floor to questions/comments:

Vinnie Savalle: Stated the Town of Lebanon had nothing to do with the problem. The problem came in 1999 when Mr. Hilzinger had an A2 survey done. He pulled stakes up and hid the A2 survey. The A2 survey was sent to me by accident.

Attorney Holley: Stated he completely disagrees with what has just been stated and the information is not factually accurate in any way.

Allyn Miller, Lynch Road: Asked for clarification if any of the land is in the Town of Colchester. Why would Colchester be involved? Could they pass and repass on the Colchester side.

Moderator Gentes: There is no land in Colchester. The Town of Colchester may have opinions regarding the use of that strip land, but they don't need approval.

Attorney Holley addressed comment to Moderator Gentes: He is not aware of any opinion from the Town of Colchester that they are aware that this meeting is happening tonight or this easement is being proposed. This was confirmed by the moderator and Betsy Petrie. The Town of Lebanon has not been in communication with Colchester and we don't know how many landowners on the other side of the property line could be potentially affected by this easement.

Moderator Gentes: Responded that we are the legislative body of Lebanon and can only deal with what happens in Lebanon.

Allyn Miller: Is there is a letter from Sal Tassone, Town Engineer in Colchester, stating that there is no problem with Vinnie Savalle to build his house?

Moderator Gentes: Responded that on the advice of two individuals, we are not going to make any assumptions on what the Town of Colchester could be doing. These are not relevant facts to help us make a decision as electors in the Town of Lebanon.

Jay Tuttle, Card Street: These are property owners that are unable to access their property. In order to do that they are asking for an easement.

Moderator Gentes: Responded that one landowner is asking for a utility easement.

Jay Tuttle: Granting them an easement they could both benefit from the easement.

Attorney Holley: Requested clarification on the number of lots that could be developed and will this be part of the motion as there was a statement regarding the number of lots and development that could go there.

Phil Chester, Town Planner: Responded that what town meeting is being asked here tonight is not to open the road so that someone can count frontage towards building lots. Mr. Chester referred to the map projection pointing to three lots. What is shown in red on the map is the easement. It touches three lots. It also touches the lots to the far north but it already has a house on it. It would allow the other three property owners; the two Hilzinger properties and Mr. Savalle and Ms. Davis to have a building lot. It would not allow a further subdivision. The town is not being asked to open the road as it would have to meet frontage requirements. Lebanon can only account for Lebanon, and Colchester would have to give a go ahead for emergency services to have the roads passable. The Town of Lebanon requires turn around for emergency services.

Attorney Holley: Assuming this easement is granted, and assuming property owners are willing to rebuild, what used to be known as Perry Road pursuant to town requirements? If this easement gets granted, there will not be any specific limitations to development rights?

Phil Chester: Responded that no lots can be created on town land with easements on it, it has to be on public road and must meet subdivision requirements. It has to be on open public road.

Diane McCall, McCall Road: Can anyone go down that road?

Phil Chester: Stated because of the change in events when Mr. Stefon discovered the 1769 deed, the Board of Selectmen, Planning and Zoning and myself said this is town land. Anyone can walk on town land. There is no prohibition against it.

Diane McCall: At the last town meeting when it was voted on closing the road, it was asked then if we could walk on it or ride a bicycle down it. We were told we could but then "Keep Out" signs were posted.

Attorney Holley: Stated he disagrees with the statement that this is a public road. The Appellate Court in the State of Connecticut in their decision said the public right of use of what was Perry Road has been discontinued. The town is a private land owner relative to that land. This is not a public way anymore. If the town is going to let recreation use there, then the town is responsible for that as a private land owner.

Resident: Stated this is affecting the people of the land and why are we stopping them from building.

Mr. Stefon: Stated that Perry Road is passable. The Colchester Fire Department visited the site and have found no problems in its current condition to be able to support emergency support apparatus.

Moved by Joyce Okonuk, seconded by Betsy Petrie to call the question.
Vote called: motion Passed.

Moved by Betsy Petrie, seconded by Kathleen Smith to vote by show of hands. Vote called: Motion Passed.

Moderator Gentes called the question: "Consider and act upon Granting non-exclusive easements for ingress and egress and utilities in and over a strip of land owned by the Town, formally known as Perry Road, to Vincent T. Savalle and Teri J. Davis and also to John R. Hilzinger. Said easements shall be approved as to form by the Town Attorney."

Moderator Gentes reminded the audience of the legal penalties for portraying yourself as a voter in the Town of Lebanon when you are not.

Point of Order by Attorney Holley: There is no confirmation process on who is qualified to vote.

Moderator Gentes: Responded to Attorney Holley that this had been noted earlier.

Objection by Attorney Holley. The objection noted by Moderator Gentes.

Moderator Gentes addressed the audience stating that in order to vote at Town Meeting you must be an elector or property owner in the Town of Lebanon.

Vote called and counted by show of hands – 41 Yes; 1 No. Motion passed.

Moved by Betsy Petrie, seconded by John Bendoraitis to adjourn at 8:40 PM.
Vote called – Motion passed.

Respectfully submitted,

Mary Ellen Wieczorek, CCTC
Assistant Town Clerk