

Minutes of the Meeting of the Heath Finance Committee

October 26, 2010

Time: 8:00 pm

Place: Sawyer Hall

Present: Jan Carr, Ned Wolf, Dave Gott, and the BOS

The BOS turned to the questions raised by the FinCom at its October 18th meeting.

1. Why is the cost being split evenly among the three towns rather than proportionately to population or past usage?

Tom said that during the operation of the Landfill Charlemont paid 70%, Heath 20%, and Hawley 10% of the costs. In the agreement reached on capping the Landfill costs are also shared proportionately although in a different set of percentages. In that agreement it was written that all future expenses related to the Landfill would be shared evenly. Although no one expected at that time that future expenses would include those proposed in option #4, Sheila said that in 2010 the three selectboards view the even split as conducive to the collaborative approach that they hope will convince voters to approve option #4.

2. How are we to consider costs not mentioned in the table, like demolition of the house now on the property and decontamination of the land from the many years in which agricultural activities and junk vehicles have occupied the site?

Sheila said that the DEP has said that no further remediation is necessary and that all the three towns have to do is to decommission the McClouds' well. Also, the town of Charlemont would become the sole owner of the property under option #4. Members asked about the possibility of other people along Avery Brook Road filing complaints about their water. Brian and Sheila said that there have not been complaints from people other than the McClouds and that there is no one else who lives in "the plume of the Landfill". The selectboard expressed confidence that this is one instance where there is general agreement based on hydro-geologic principles: water sources that are not in the plume of a Landfill cannot be contaminated by that Landfill.

3. How was the purchase price of \$350,000 arrived at? Does it reflect more a settlement to forestall a lawsuit rather than a straightforward purchase? Is there room for further negotiation?

Tom said that there was a decision *not* to negotiate. He said that Sandy McCloud did not want to spend a lot on lawyers and that she was the one who came up with the \$350,000. The towns' selectboard members believed that she had included in the \$350,000 compensation for her hardships and said to one another, "Hey, this isn't that bad, let's take it".

4. What is the property's current assessed value?

There are fifteen acres. Selectboard members did not have the exact amount but said that it is around \$250,000.

5. What are the source and nature of the pressure to act now?

Selectboard members noted that there is an offer on the table. They also pointed out that DEP has said that a new filtration system will be needed and that the towns should expect tighter regulations, i.e. lower tolerances of certain substances in the water. Board members discussed legal matters. They explained that Mark, who is Heath's Town Counsel, is the Town Counsel for Charlemont as well. Although he is not Hawley's Town Counsel (that person is Donna MacNicol), he is Hawley's lawyer for Landfill issues. Mark has told the selectboards that if a suit were to come from the McClouds, there would be as many as six counts involving various kinds of negligence on the part of the towns. Mounting a defence is difficult in such cases. The towns would be opposed by both the property owner and the DEP. Brian said that if it turned out that Hawley and/or Charlemont voters turn the proposal down, he thinks that HJeath should still hold its special town meeting. Although the purchase of the property could not occur, it would be best for Heath to be on record as having met in case there is a suit.

6. What is the state Department of Environmental Protection's likely posture on this matter going forward if the three towns don't agree to this purchase?

Board members referred us to the answer to question #5.

The discussion of liability continued. Sheila pointed out that if the three towns were to agree to option #4, there would be a legally binding statement writing the towns off from any liability from the McClouds. But liability from the Landfill will remain. In other words, a person other than the McClouds could still take legal action over the Landfill. If the purchase went through, there would be no liability to Heath from such things as pollution due to leaking machinery on the McCloud property.

There was a discussion of possible future uses of the property if the purchase occurred. By making Charlemont the sole owner the three towns would have avoided the need to have a special act of the state legislature as was needed for the three towns to acquire the Landfill. What if Charlemont wanted to sell the property or make money off the property in some other way? Should Heath receive one third of the money? Members expressed concern that Heath be held harmless for any liability arising from what Charlemont might do with the land. Brian said he thought that Heath should benefit from any sale of the property but probably not from any money making activity. There are details in the municipal agreement that have yet to be finalized. Another concern involves supplying the McClouds with potable water if they are in a situation where the property has been purchased, the well has been sealed, and they are still looking for a new place to live. There is agreement that there would need to be a time limit for the McClouds to leave.

Whether or not the towns agree to the purchase, there will have to be continued testing of wells at the foot of the Landfill. This is partly a check on the integrity of the capping of the Landfill.

Finally, there was a discussion of whether or not one or more of the towns would seek a debt exclusion to finance its approximately \$140,000 share of the expenses in option #4. That would mean that the financing would not occur within the levy limit of Proposition two and a half. Members said that historically voters have been reluctant to approve proposals involving a debt exclusion. Tom said that Heath's Free Cash has just been certified at \$113,000. It might be possible for Heath to avoid seeking a debt exclusion through some combination of Free Cash, borrowing, and use of the fund for the water testing and mowing associated with the Landfill.

Selectboard members encouraged the FinCom to meet with the Hawley and Charlemont FinComs to discuss such things as financing.

The next meeting of the selectboards of the three towns on Landfill issues is November 8th at 7:00 pm in Charlemont at the Town Hall.

The Finance Committee adjourned at 9:10 pm.

Respectfully submitted,

Ned Wolf, Secretary