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**Charlton Board of Selectmen  
Special Meeting  
March 18, 2019 @ 6:30pm  
Selectmen's Meeting Room**

Present: Chairman – John P. McGrath, Vice-Chairman – Deborah B. Noble and Clerk – Karen A. Spiewak. Also present: Town Administrator – Robin L. Craver. Absent: Members – David M. Singer and Joseph J. Szafarowicz.

Mrs. Craver said the meeting is being recorded for the purpose of minutes.

Also in attendance: Attorney Jonathan Silverstein, Gerry Foskett, Highway Superintendent, Patricia Rydlak, Planning Board Chairman, Joseph Spiewak and Bill Borowski.

1. Open Meeting – Chairman McGrath opened the meeting at 6:35pm.
2. Emergency Procurement – Highway Department – 2 trucks. Mrs. Craver stated that Highway Superintendent Foskett was forced to permanently remove from the Highway Department Fleet three (3) Dump Truck/Sanding units. Two units will be taken out of service due to total frame failure. The third unit was declared totaled by an insurance appraiser after being involved in a motor vehicle accident. The loss of these three units if not replaced will result in public safety being compromised beyond what is required and expected. Mr. Foskett is making a request for the emergency purchase of two (2) new Cab and Chassis including central hydraulic systems, plow and plow frames. Old sanding units will be utilized on new Cab and Chassis. The purchase of new dump bodies are not necessary as they have enough for summer operations. He states that the reason this request is for immediate funding is that there will be approximately seven months of build time needed from date of order. That would make it available for the beginning of the next winter operations. The snow & ice operations consist of eleven plow and sand routes. Each route has approximately eleven miles of road to cover. Two additional trucks would allow for one spare unit to cover breakdowns. The bid price for new Cab and Chassis from Tri State Truck Center is \$95,242.00. The price for central hydraulics, plow and plow frames from J.C. Madigan is \$36,700.00. Total per unit is \$131,942.00. The total being requested is \$263,884.00. Mrs. Craver stated that they had a conversation with the Finance Director and they believe they would be able to utilize Casella monies, which is one time money for capital purchases. This is a related correspondence being able to keep the roads clean from contamination and environmental. Mr. Foskett came forward to answer any questions the board may have. Chairman McGrath asked what year the vehicles are. Mr. Foskett said one is a 1994 and the other two are 1996. Mrs. Craver said she had a conversation with Mr. Foskett asking him if he was absolutely sure he couldn't wait until town meeting to order this and the wait time is long. He was told if he gets the order in by April 1<sup>st</sup>, he'll have it somewhere in the timeline of December which is very important. Ms. Noble asked how much funding do we have in the Casella account and Mrs. Craver stated \$744,000. Ms. Spiewak's question is about procedure and process. Is this typically what happens? She thought this would go before Fin Com actually and then to the board. Chairman McGrath said for an emergency procurement, they would come here first to see what happens. Mr. Foskett said this is his first time coming, the situation has never been dire. He has never had three trucks out of service in one season. Mrs. Craver said if this was a capital purchase on the capital plan it would go before the Finance Committee but because we already have the funding, the Board of Selectmen can make that decision. She's not sure if Mr. Foskett can wait until his meeting with them. She also said we have one of the Finance Committee members sitting in the room. Ms. Spiewak said we are meeting with Fin Com on Wednesday and she would be willing make a motion

pending Fin Com approval and we can discuss this with them. **Motion by Ms. Spiewak that we approve \$263,884 for the purchase of the two trucks for the Highway Department as presented here by Gerry Foskett pending Fin Com approval, seconded by Ms. Noble, motion passes.** Ms. Spiewak asked what would happen if we didn't have this money? Mrs. Craver said if there were no funds available, we would have to call a Special Town Meeting unless it was in the Finance Committee's reserve amount. Mr. Foskett left the meeting. Mr. Borowski asked Mrs. Craver, wasn't this talked about in Fin Com already? Mrs. Craver thinks she mentioned it to them at the end of the meeting.

3. Town Meeting Articles – update.

Mrs. Craver said the board asked her about timing with the Town Clerk for Article 1. The Town Clerk needs any language for referendum questions by the 27<sup>th</sup>. She would ask the board to decide if they are moving this question forward. She said there was also a question about a public safety building debt exclusion. She would recommend not to move that forward now but to wait until after town meeting and get the direction. She said sometimes it's better if the town has an opportunity to see the whole presentation before they are asked to go to the ballot. If this passes, we could have a special town meeting. Chairman McGrath has a question for Attorney Silverstein regarding Question 1. He said with the land court saying you couldn't use a general bylaw for marijuana where the town has used zoning to do it, is this a moot point with this question? He stated to Ms. Rydlak that the Planning Board has a zoning article going on about banning marijuana. Ms. Rydlak said it's the same one that was going to go on the last town meeting and they are going to hear this and pretty much no changes. Chairman McGrath said so we will have two questions on the ballot and his feeling is not to do Question 1 as the general question because the court has already said don't use that to do the marijuana and we have a zoning article on there basically doing the same thing. Mrs. Craver asked if this is because the Board of Selectmen had moved it forward is why the Planning Board is bringing it forward now or is the Planning Board initiating that because we didn't go back to the Board of Selectmen asking if they wanted to sponsor this article again. Ms. Rydlak said she didn't see the vote rescinded, she just assumed the timing of it was missed before they were able to have the public meeting in time. Chairman McGrath said that the board dropped the ball on that, it has nothing to do with the Planning Board. We lost sight of it. Ms. Rydlak said they just decided to sponsor it themselves because many of the residents in town have been asking them. Mr. Borowski said based upon the Planning Board's sponsorship of the zoning article at town meeting, would it be worthwhile to still have a referendum ban on the ballot but have it as part of the zoning article and not a general bylaw? Meaning on May 4<sup>th</sup>, you would vote essentially to ban marijuana as a zoning piece and then at town meeting have the second bit of it which could essentially pass on and go forward. The alternative is if it passes at town meeting, then it could be part of a special town meeting or something like that which would be part of a special referendum for hopefully the public safety complex. Regardless, it's still a two-piece vote whether it's a general bylaw or a zoning bylaw. Ms. Noble said the zoning marijuana ban will not be voted on until town meeting. This referendum question has been declared moot by the courts. Mr. Borowski agreed and said that we would not put that one on but replace it with zoning. Mrs. Craver said it's the same language. Mr. Borowski said depending on the language to still go forward with it knowing that it's not tied to the general bylaw which was declared null and void but rather tie it to the town meeting zoning ban. Because one way or another because we are a yes town, it needs two votes in the affirmative. He asked do you do the town meeting first then a referendum or a referendum then town meeting? Ms. Noble thinks it has to be the town meeting vote then the ballot vote. That's the way it's written. Ms. Spiewak has it with her and quoted the MMA best practice series, January 2018, volume 3 number 2 MMA Policy Committee on Municipal and Regional Administration Best Practice Recommendation: Recreational Marijuana Strategy, paragraph 3, the office of the Attorney General has recommended that cities and towns act as quickly as possible on the local decision making process. Municipalities that choose not to pursue prohibition of recreational sales or other facilities are still advised to pursue and implement proactive zoning policies prior to the date. This isn't what she wanted. Municipalities have the right

to zone for location of cannabis facilities, as well as determining the time, place and manner of operations. This can include time of operations, advertising and zoning locations. Those communities wishing to create distinct zoning locations or districts for either recreational facilities or cultivation facilities, separate from existing allowances for commercial and agricultural activities, are encouraged to act as quickly as possible. Mr. Borowski said he has never read anything that talks around the planning. It seems a lot of communities do debt exclusions in the same way, that some have the ballot vote before the town meeting. He thinks no matter what, it is probably fine. Knowing that town meeting is 2/3rds it's probably worth it. Chairman McGrath said on the ballot from the original land case court that just went through with the general bylaw, it was a two part item. One was the vote that was taken at town meeting and then they wanted to put on a referendum question, shall the Town of Charlton ban marijuana? That was just on the general bylaw. In the meantime, the Planning Board, at the board's request, had drawn up a zoning bylaw banning marijuana. He stated that Ms. Rydlak said the Planning Board is moving that forward. They are sponsoring it. The question is because we are a yes town, we have to have two votes that he didn't realize, we have to have the town meeting vote then we have to have the question on the ballot. Which way is the cart before the horse? Mr. Borowski asked which one should be done first? Attorney Silverstein stated that they have the town meeting vote then they have the ballot vote because if it doesn't pass at town meeting, if you were to put the ballot question on your upcoming election, then whatever happens at town meeting would not affect, you can't take something off the ballot once it's on there. What most towns do, they start with town meeting vote, if it passes then they call a special election for the question. Mr. Spiewak said in the fall, it was voted to move it forward because it was requested by the citizens, miraculously didn't get the timeline done on time, so we couldn't make it for the fall election and you weren't interested in including it on the ballot, too complicated. Here comes the town election, now we are going to say were not going to have it here, now were going to have the town meeting vote, when would you intend to call an election? Chairman McGrath said whenever the board decides and he said if it passes at town meeting, he would not be against having the town vote on it right away. Attorney Silverstein said you should call an election within 35 days. Chairman McGrath doesn't view this as a problem and doesn't think the rest of the board members do. Mr. Spiewak said if it's not voted at the town election, meaning it doesn't pass, then you wouldn't vote it at the town meeting either. He said it's chicken and egg. Ms. Noble said the referendum question is based on a general bylaw. Chairman McGrath said he thinks he's talking about the zoning bylaw. Ms. Noble said if that passes, Section 200-5.20, Zoning Ban – Marijuana, if that passes by more than a 2/3rds vote at the town meeting, then we could hold a special election 35 days later. Mr. Spiewak said it doesn't matter which way you do it, it's a lock and a key, so you could have the election and know one way or the other. It's not going to be enforceable, we know that. It's already been said by the AG that it's not enforceable without the zoning. It's not enforceable anyway because you have people grandfathered in but ultimately you now understand the will of the town. Ms. Spiewak said she will also add that the board voted to do that. We voted for that ballot question to move forward. Chairman McGrath said correct. Ms. Spiewak stated that we cannot just take no action unless we either have to vote to rescind that or we have to do it because the board voted to do it. Chairman McGrath said he doesn't think anyone here has any problem with moving forward with the Planning Board article on zoning to ban marijuana. He thinks the discussion is just that. It's a discussion on how we are going to do it. Mr. Spiewak brought up a good point and he can see the merits in that. He has no problem with putting it on the ballot and then bringing it to town meeting. If it doesn't pass at the ballot then it's a moot point at town meeting. Mr. Borowski said theoretically, if it fails at the ballot and then passes at town meeting, you could put it back on the ballot. He thinks one of the arguments that was made in the fall was that it was to be delayed until it was a municipal election to get the greatest input from folks. That's his argument, saying it will be on the May 4<sup>th</sup> election to say that's when people will go out as opposed to a special town meeting there really is pure special interest at that point. He agrees that you still need both so do you call a special election after or do you stick with it and say theoretically, more people come out on an annual election and you might get better representation. Ms. Rydlak asked isn't it cheaper if people come out and vote on the

ballot? Isn't it more expensive to do something later? Chairman McGrath said yes, there is more cost to it. He said this is the discussion which there have been good points made. He said they are going to take a vote. Ms. Noble said she was confused because she thought this referendum was going to go on as a general bylaw question but it is not. It will go on as a zoning question. Chairman McGrath said to do that, we are going to need some advice from town counsel he believes, on how the question has to be worded to go on the ballot so that we can give it to the town clerk. Mrs. Craver said it has not gone before Attorney Cosgrove yet until she can narrow down what the board wants. She is hoping that is completed and the board will have the exact language by the 26<sup>th</sup>. Ms. Noble said per the courts, it has to go on as a zoning bylaw. Mrs. Craver said you have a zoning bylaw and that's why she put it in there because she was aware they were going to put a zoning bylaw so you have both. Chairman McGrath said we will have to have Attorney Cosgrove confirm and work on the wording for the ballot question. There is a bunch of stuff he will have to look at. Are we going to reference the zoning bylaw that is also going to be at town meeting? Attorney Silverstein said you have to. The ballot question has to include the actual language in the bylaw and that language in the bylaw is really strong. Mr. Borowski said that if you put it on the ballot and it dies, you can still vote on it at town meeting or you could just motion to bypass it, to table indefinitely. The board directed Mrs. Craver to work with town counsel on this. Chairman McGrath said there were two citizens petitions that came in. One was from Mrs. Benjamin on the Planning Board and it was specific and Ms. Rydlak's was very explicit in what she wanted also. As the board had decided probably about 4 or 5 years ago, all articles that are going on the warrant, go to Attorney Cosgrove except for the Zoning Bylaw articles. The Planning Board always had the professional town planner take care of their stuff. Jim has opined on the two articles. He believes everyone has read them. He shared his opinion with Ms. Rydlak and Ms. Benjamin also. Mr. Singer at our last meeting when we were talking about this, wanted to make sure that the petitioners had the chance to talk to town counsel and change the language of the petitions so that they would be less personal and see if he could work with them to change them so he could give a recommendation to put them on town meeting and that hasn't happened as far as he knows according to Jim. Nobody had gotten back to him. Ms. Rydlak has sent him an email so that's where we are right now. He said right now we have held up putting these two articles on the warrant. Ms. Spiewak said she did see the back and forth. Her understanding is that Jim does this for us because the board has a new policy that we ask him for that kind of help with the wording for that. She has a couple of comments. She personally thinks and she did look this up and actually called Galvin's office to and she will share this with the board, she doesn't think we should ever block citizen's petitions. She thinks we are simply a pass through and she will share MGL Chapter 39, section 10, the selectmen shall insert in the warrant for the annual meeting all subjects the insertion of which shall be requested of them in writing by ten or more registered voters of the town and in the warrant for every special town meeting all subjects and it goes on and on. If you read it through, it doesn't say and she has looked over many things and talked to people, that we can deny it. She said the town of Weston actually has a six page policy procedure that it gives to the residents to help them, even when they are at the town meeting what to do, what to go up and say, a nice form, it's amazing. The template they have is very good and they call it one of their accepted appropriate subjects for town meeting. She said both citizens petitions she thinks fall under what's considered a resolution which is indeed an appropriate subject for town meeting. She knows Jim had some concerns about us putting it on there but she thinks we should be more concerned if we don't put them on there. She understands town meeting can't direct us what to do, again, but it's more of a resolution, not we can say we can't take action but she thinks in accordance with this MGL we don't really have a choice of denying it. Ms. Noble said last year, she had a chat with Attorney Cosgrove before town meeting, before any of this came up, and she talked to him about some of the petitions that were coming up, and she asked him if we know that somebody is putting forth a petition that holds no merit, that is invalid on its face, do we have an obligation regardless of how ridiculous it is to put it on the town warrant and have it be voted on. What Jim said to her was this, Deb, if somebody brings forth a petition that says all white dogs have to be painted with pink polka dots, and it has 10 signatures, you should put it up there no matter how ridiculous it is, you have an obligation

to do that. And frankly as ridiculous as she sees these things being, she will put them up there because that's the law and she follows the law. Chairman McGrath asked what's the board's wishes on the warrant? Do we have to close it? Ms. Spiewak said if everyone has followed, they got their signatures, the signatures were certified and everything was submitted on schedule, they met all the criteria. Chairman McGrath said the chances are that Ms. Benjamin will not put hers' on and that's only because she went to Cosgrove first and she didn't get signatures. That's the way you should probably do it because Kristen did hers that way for the recall. Ms. Spiewak said she went to Cosgrove first wouldn't you rather go to the clerk first. Chairman McGrath said no, for the language she went to Cosgrove first on how to do it because it's special legislation. Patty Benjamin he believes did the same thing and she didn't have signatures. He said Patsy had done hers and it ended up at Cosgrove's after that. Ms. Spiewak asked if we need a motion to allow those two? It was decided to wait until the 26<sup>th</sup> to close it. Chairman McGrath said he would rather have a discussion so that everyone gets all their stuff out and we can think about what we want to do. Ms. Noble said for something like this she does think we need the full board.

Other Business (unknown at time of posting)

Ms. Spiewak said before we go into executive session, she didn't know if the chairman of the Planning Board wanted to make a statement regarding why she denied coming to the meeting.

Patsy Rydlak said she knows there are a lot of emails from the residents to the Town Administrator going back and forth.

Chairman McGrath said and to the board, it all gets forwarded.

Ms. Rydlak said what she's been getting back is they were offered this big opportunity to come to this executive session and they denied it. She said they denied it because they have been asking for counsel to discuss strategy but their side is different from the board's strategy. The only reason they would want to meet with the board is getting counsel and they didn't want to break the open meeting law to go and discuss that you would or wouldn't be giving them counsel. They didn't feel it was the correct thing to do.

Chairman McGrath thinks what's going to be discussed, he believes tonight, is the strategy and what the courts have decided on with all the counsels that are involved already. He thinks it would have benefitted the Planning Board if they could have heard that from our counsel. He said he can't tell her how to run the Planning Board. They are a duly elected board but he thinks it's a missed opportunity for them to have seen the thinking on pretty much all of the counselors. That's the way he feels.

Ms. Rydlak said she did listen to whole audio, she has been keeping very, very, very close. She said she guesses she is acting as their counsel. She said it appears that a strategy has already been set. It appears that a judge is actively working against their decision and she has the audio on her phone.

Ms. Noble asked did you just say you have the audio of the court's conference call on your phone?

Ms. Rydlak said it's public information. She said listening to the audio, she feels that a strategy has already been determined and it would really be a waste for her whole entire board to come and hear that the strategy is to consolidate and to work against their decision.

Chairman McGrath thinks that she has drawn conclusions on things that haven't happened yet. He said first of all, we as a board have never met on this. What we did is we have taken advice from counsel on what he and the other lawyers have come up with on what court to have everything in and how they want to proceed including the opponents as well as the proponents agreed that they would

rather wait for the Planning Board to have their subdivision vote and then see where all the chips lay and then they would move on forward from there.

Attorney Silverstein thought he could shed some light on a couple of issues. He said it's not been a secret that his direction all along has been to and this is from well before the Planning Board issued, so it wasn't initially a direction to oppose the Planning Board, it was a direction to support the determination of the Building Commissioner/Zoning Enforcement Officer. He thinks that was an appropriate determination by this board to make and an appropriate direction to give him. He has never suggested in all that he digitated to the chair, that he agreed with the Planning Board determination, that it made sense to him to continue the process in that matter. He supported a very qualified counsel in Mr. Bobrowski to do that. So he agreed he would not be an appropriate person if the board were to decide to appoint counsel to the Planning Board, it should not be him. He has never suggested that it should be. The decision of whether to appoint counsel to the Planning Board is for the Board of Selectmen to make, that's a policy decision and that's one he thinks the Board of Selectmen want to discuss in executive session because necessarily it involves discussion about the merits of the appeal to the Planning Board's decision which you don't want to have a discussion of in open session because it is only going to give power to those that are challenging the Planning Board's decisions so you'll want to have that discussion in executive session. He certainly disagrees that it would be an open meeting law violation to discuss in executive session if the very purpose of the executive session is litigation exemption that allows for litigation strategy. Those exact types of determination whether or not the board thinks it's a good use of town dollars to appoint counsel for the Planning Board makes total sense to have executive session. He has not done anything to the land court other than what very publicly he has said previously based upon the Board of Selectmen's direction, is that he has been tasked with defending the claim against the town so he would certainly disagree that his role as directed by the Board of Selectmen has never been to oppose the Planning Board since well before the Planning Board made its decision, his role, his direction from this board has been to defend against a claim against the town by someone who has sued the town on a number of occasions, to continue to defend the town against a lawsuit against the town by someone that has previously sued the town and he thinks that is totally appropriate and he would disagree with any characterization of anything he's said to the land court as being quote, unquote, against the Planning Board. He is defending the town in litigation brought against it. He is defending the Building Commissioner in litigation brought against him. And he would just note one other thing only because he thinks it's important for you to go through your stuff. At one point during the court conference at the beginning the court asked if anyone else was on the line, other than Fennessey and Rosen indicated they were, surely no one indicated they were tape recording the conversation and he thinks that's just something that needs to be carefully considered.

Chairman McGrath wanted to bring something up.

Ms. Rydlak said by default, by defending Curt's opinion which is not even a legal opinion, it's automatically going against what the Planning Board, with that said, they would be sitting in a room with the Board of Selectmen and your counsel and the Planning Board as accountants, retiree, you know her board, we would be sitting in a room with you and your counsel and we would not have counsel.

Chairman McGrath said it's not our counsel, it's the towns counsel. It's the towns counsel, it's a town employee, it's a town department head that's being sued by somebody and this was before you even made your decision, so that's why Jonathan is defending Curt. He said that the Planning Board has their opinion on why they think it's not an allowed use. Frank is going to use that opinion to say that even the Planning Board thinks that this is not an allowed use, and it's going to be up to VGG to say why they believe it's an allowed use. So that's the first thing but there's a perception that the individual members of the Planning Board are being sued and it's good to have Jonathan here. He

went back to when he first got on the Zoning Board of Appeals, Millennium was going on at that time. He was appointed to the Zoning Board of Appeals. He went to two meetings of the Zoning Board of Appeals and all of a sudden he has the sheriff dropping something off for him at the door. Michelle said what the hell did you get into and he said he has no clue. He said let me call Mr. Mrzyglod and find out what I've gotten in to. So he called Mrzyglod up and he says don't worry about it he says, Cosgrove is taking care of it. He did reach out to Jim Cosgrove and he said John the town and the Planning Board are being sued, well the Zoning Board of Appeals, he said they list out the names of the members of the board but you are not personally being sued. He said they are suing the town. The flip side of that is that if somebody brought a civil suit against you or any other member of the Planning Board that gets turned over right away to the insurance company and we ask for defense of the civil suit under the conditions of our insurance policy and they supply counsel for that and that's how that works. He asked her to relay to the Board members because he knows how he felt when he was served with paperwork.

Ms. Rydlak asked if he had an attorney to represent him when he was served papers because that's the difference, if we had, to find that Mark here is saying alright Patsy good job, I'm going to take it from here, we would feel much better but they don't have that.

Chairman McGrath said but you do have that.

Ms. Rydlak said they don't.

Chairman McGrath said yes you do. The town is being sued and the strategy that we still have to work out is that we will either appoint counsel or we can allow the two sides to argue it out with their lawyers on what's going to happen and that's where we are now.

Ms. Rydlak said for eight months of hearings till 11:00 and she would probably say probably over 10 hours a week for her just studying plans and doing the research. As an elected official she feels she should be putting everything into making sure their decision they are an elected board is defended at its best so letting everybody duke it out and let us sit back .....

Chairman McGrath turned to Jonathan on the strategy that has been used with Hylka and 508.

Attorney Silverstein said he didn't want to get into litigation strategy in an open session but let me say this, the two most commonly used is zoning .....both require that when decisions get appealed, the members of the boards be named. The reason for that is not to create any exposure to the individual members of the board but rather to make sure that the individual members of the boards have notice of the cause because particularly back when those statutes were adopted but even today, there are many communities that don't have professional staff, they maybe have part time staff, and so the idea is by requiring that each member of the board be provided a copy of the complaint and be named in the complaint only in their official capacities that there would be adequate notice of you. There is absolutely zero personal exposure or liability. You are only named in these appeals as a member of the board in your official capacity. When someone and it's happened to some people in this town, when someone as the chair noted is named individually whether it's some sort of intentional tort claim, that's a very different situation. This is obviously a situation that no one wants to be in but it's very different from the fact that you as members of the board have to be listed by statute. It requires you to be listed in the complaint. That's all that is. In terms of the strategy and he hates to sound like a lawyer but he is and he really doesn't feel comfortable discussing that in public session.

Ms. Rydlak said that fine. She said if your going to be involved in letting them get an attorney, let her know because they are ready to go find one. Ms. Rydlak was getting ready to leave.

Ms. Spiewak told her not to leave, she wanted to ask her a couple of things. Ms. Spiewak said through the chair, part of her frustration has been since all of this has happened. It turned into the friendly lawsuit is not so friendly anymore since the decision of the Planning Board and they are again, the named defendants and she gets what Jonathan is saying but as a peer, as someone who has been reaching out saying that we should meet, we should discuss and she does believe had we done this early on we could have avoided a lot of what has transpired. And quite honestly, the action that has been taken by you with all due respect John, as the chairman without consulting your peers because she's looked through a lot of the Planning Board minutes, she does a lot of reading, the March 6<sup>th</sup> extension to quote in the Planning Board minutes where Robin stated the Board of Selectmen has said they just wanted to wait until after this, she keeps reading the Board of Selectmen. It was not the Board of Selectmen.

Chairman McGrath said it was not the Board of Selectmen.

Ms. Spiewak said it was not the Board of Selectmen.

Chairman McGrath said it was not the Board of Selectmen. He said the Board of Selectmen have never met on this and there was a reason for that. And the reason was on the advice of counsel and we did tell the members of the board what was going on, we did not meet on it but we did let the board members know what was going on. The night that those decisions were made, it was not just the town of Charlton's choice on how to handle this and that was the problem. The problem was that there were three parties involved in this. There was the opponents, there was the town's lawyer who is working on Curt's defense, Jonathan and there was VGG and they were deciding how to handle it. We could not make a good decision until we had all the information and there was nothing to talk about in any executive session or anything.

Ms. Spiewak said but yet actions were taken and extensions were given and consolidations were discussed or whatever, but we, the Planning Board or the rest of the board didn't direct you to direct our attorney to do any of that. So you were acting.

Chairman McGrath said no. The attorney.

Ms. Spiewak said the Board of Selectmen does plan on doing exactly what it says is that they will deal with this after the 6<sup>th</sup>. When did the Board of Selectmen say that?

Chairman McGrath said the Board of Selectmen had Jonathan working, so he thinks we are getting into strategy a little bit here.

Ms. Spiewak said she doesn't know if that's strategy, this is .....

Attorney Silverstein said he could clarify exactly what happened. First of all, no actions were taken. The court made very clear, the land court, from the very first scheduling conference, the summary judgement hearing, that it felt that all the appeals relative to this project, something courts do all the time which is a matter called judicial economy, it doesn't make sense to have two or three different courts dealing with two or three different lawsuits all which relate with the exact same property, the exact same parties, the exact same project. So the way the court said early on, it wants to have everything in under its purview. The reason the site plan decision appeal was filed in Worcester, it's simply a function of the fact that the town's bylaw requires that appeals be filed in Worcester Superior Court. He doesn't think it was intentional but he wasn't at that town meeting but he thinks chances are it wasn't to exclude the land court which generally has jurisdiction over zoning. He thinks it's just sort of a quirk with the bylaw that no one anticipated. It happens. So it was filed in



Worcester Superior Court, it was requested to be transferred. Attorney Fennessey didn't complain about it when it was discussed earlier on in the land court case. No one did because frankly, it only makes good sense. That being said, no action was taken by him on behalf of the town with respect to that. That wasn't his request to transfer, it was a request by VGG. It's certainly one he think makes sense and he didn't hear Attorney Fennessey contest it either. So no action was taken on that. With respect to the extension, again, the only thing he did because he knew there was a concern about default, a potential default from the board and although VGG's counsel told him don't worry, they are not going to default the Planning Board because the Board of Selectmen has not yet discussed appointment of counsel to the Planning Board. He said he thinks everyone would be more comfortable if you put that in writing. That's all he did. There wasn't any sort of extension agreement. His agreement was not required. VGG has the absolute right to extend. All they did was say we're not going to try to default the Planning Board. To the extent it's anything, sort of an acknowledgement and a courtesy even though litigation with people arguing with each other, lawyers try to be courteous with one another with opposing parties and that's what that was.

Ms. Rydlak said they didn't know any of this was going on until after the fact. We feel we know that at one point the Town Administrator went here, here's the email and we saw the whole trail of emails of all the discussion over a series of a couple of weeks, back and forth, back and forth and then here you go. That was just, she thinks the process was really, really bad so all of this back and forth just kind of resulted in us completely being left out of the loop, completely. She means, we asked a hundred times let's meet, let's figure this out and it could have been just you and I, it could have been, it got so nasty, again, we knew nothing of what was going on then all of a sudden, oh it's extended.

Chairman McGrath said to Ms. Rydlak that he believes she should probably talk to Ross Lemansky because he did keep Ross in the loop of what was going on because he knows he works for himself and he was not going to interfere with Ms. Rydlak's work. He tries not to do anything while he's at the state that involves here unless he takes time off. So she should probably want to ask Ross what he conveyed to him at the start of all this. And he did keep him in the loop.

Ms. Rydlak said she has every single text. This is worth well more than a quick conversation on a text back and forth.

Ms. Spiewak said again through the chair, part of her frustration was bring everyone to the table and let everyone know what's going on. The clock was ticking, they had 20 days to respond. She can only imagine what they were going through and with no attorney. Meanwhile she gets that he talked to Ross, is that really a best practice? She means, hindsight, if we had this to do it all over again, it's that game of telephone, you know the message is going to get twisted and turned in different directions and in her opinion not the best way to convey to keep the board informed.

Chairman McGrath said put it this way, if I was to do this again, it would be done differently, absolutely. There were mistakes made positively.

Ms. Rydlak – Thank you.

Chairman McGrath – no problem Patsy. Thank you.

Ms. Spiewak – are we going to go into executive session?

Chairman McGrath – yes we are going to go into executive session.

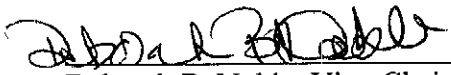
4. Executive Session – Motion by Ms. Noble to enter into executive session pursuant to M.G.L. c. 30A, Sec. 21(a) – to discuss strategy with respect to litigation regarding Valley Green Grow, to hear recommendations and take action if needed, if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares and to return to open session if needed and to adjourn, seconded by Ms. Spiewak. The chair declares that an open meeting may have a detrimental effect on the bargaining or litigation position of the public body. Roll call vote taken: Ms. Spiewak – aye, Ms. Noble – aye and Chairman McGrath – aye.

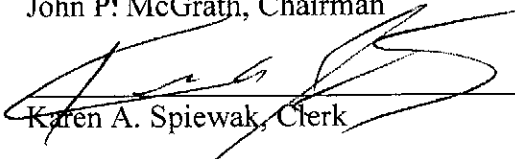
Motion by Ms. Noble to adjourn at 9:50pm, seconded by Ms. Spiewak, motion passes.

Submitted by:  
Mary C. Devlin  
Administrative Assistant

Accepted by:

  
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John P. McGrath, Chairman

  
\_\_\_\_\_  
Deborah B. Noble, Vice-Chairperson

  
\_\_\_\_\_  
Karen A. Spiewak, Clerk

\_\_\_\_\_  
David M. Singer, Member (absent)

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Joseph J. Szafarowicz, Member (absent)