TOWN OF RANDOLPH
BOARD OF SELECTMEN
Tuesday, April 12, 2011
10:00 a.m.

BOS PRESENT:
Edward F. Gorham, Chair
Peter K. Hanley

OTHERS PRESENT:
Lynn Mealey, Town Clerk
John Crocker
Glendon "Sonny" James
John Larouche, Town Attorney
Janet Richards, Treasurer

Meeting was called to order at **10:13 a.m**. Mr. Henderson called to say that he would unable to attend the meeting.

Payroll and accounts payable warrants were signed by Selectboard members, Edward Gorham and Peter Hanley.

Peter Hanley made a motion to accept the minutes of the March 29, 2011 meeting. Ed Gorham seconded the motion. **VOTE – UNANIMOUS**.

Contract regarding **Dispatch** services from the **Department of Public Safety** was discussed. It required a signature and return to the State of Maine. When it is received, it will be signed by the State of Maine and a copy returned to the Town. Ed Gorham signed the contracts as Chairman of the Board.

Discussion of proposal submitted by MS Electric for bringing the Fire Department up to code. Ed said that perhaps the Town could getanother bid. He would like to call Tom Staples who did the installation of the light in the restroom of the Town Office. Ed made a motion to table this decision until he has talked with Mr. Staples about submitting a bid. Peter Hanley seconded the motion. **VOTE –UNANIMOUS**.

Ed will plan on attending the **Bureau of Labor Standards "Town Meetings**" to be held in Fairfield on May 19, 2011at the Safety Works Training Facility.

Letter from **U.S. Census Bureau** regarding the 2010 Census County Question Resolution (CQR) to be conducted between June 1, 2011 and June 1, 2013 was read.

State Valuation Report was read and will be given to the Treasurer.

John Crocker presented his **budget** proposal as requested by the Board. They will review and make recommendations to the Budget Committee. John discussed repairs that will need to be done to the sidewalks. The State owns the sidewalks but the Town must maintain them. Paving will be done on South Maple this year.

Treatment of the roads with **calcium and salt as opposed to sand** use was discussed. Ed stated that he is going to set up a meeting on this issue with Phil Curtis. John said that street sweeping may possibly be eliminated in the future ($10,000.00) if sand is not used but this amount should be kept in the budget for now.

Spring Clean-up was discussed. John stated that it will be done during the week of May 16th and should be finished by May 20th. He is waiting on prices from Hatch Hill to set the fees but they will most likely be kept the same. Price should be $25 for a residential permit, $50 for a commercial with extras for TV's computer monitors and tires. Also **street sweeping** will commence on May 1st. There will be ads placed in the Kennebec Journal and on the Website with details on both events.

John Larouche entered the meeting at 10:53. Attorney Larouche was at the meeting to discuss the ongoing problems with the **sewer project** and give his opinion as to what the Town should do at this point.

He has been informed by the engineer that the project is at **Substantial Completion** and the fact is that TCI did not perform well. If the Town were to assess liquidated damages it would in essence, wipe out the entire contract and would leave the town open to a lawsuit. He feels that with the way the contractor has performed, it is likely that there will be problems. He recommended bringing all the bills up to date. Attorney Larouche stated that he knows our engineer, Charlie Smith, has around $50,000 of his own time.

The root of the issue absolutely is that the town went out with a low bid contract. There is no excuse for the months that have gone by with all the problems and missed deadlines and the only recourse that the Town has under the contract is to charge liquidated damages. If the town does that it will totally eclipse anything that the contractor will have made and the contractor will probably in turn, initiate a law suit. At a meeting in October with the contractors, sub-contractors and Rural Development, it was decided to only charge them for our actual costs. More could have been charged. Any good business would have responded and gotten the job done but this company did not when given the chance.

All bills should be brought up to date, including Charlie Smith and John Larouche, and charge it off against **TCI.** There is a retainage provision in the contract. Substantial Completion does not mean that they must be paid 100%. There will ordinarily be a time for them to determine whether or not the pumpstation works properly. Attorney Larouche stated that the Town should expect that there will be some problems.

It was suggested by Mr. Larouche that the Town's insurance policy be reviewed to make sure we are insured for any of these problems. There should be rights of subrogation in our policy which means that our insurer should be able to sue the contractor at no cost to the Town. John suggested that we check into this to be sure that insurer has these rights of subrogation.

In the future, the Selectboard should work from a list of approved list of bidders. John can handle that as Town Attorney. Every large business in the State of Maine (including the State itself) usually works from a list of approved bidders.

There is a certificate of substantial completion signed by the contractor and the engineer. Attorney Larouche advised the Town to sign this certificate. There is a pay requisition meeting scheduled for May 10, 2011 and Charlie will recommend what can be paid and what should be withheld and the town should do what he recommends. The engineer can come up with a "punch list" to be completed before payment will be received.

Sonny James stated that the alarms were turned over to the Town on Monday, April 11, 2011. There were alarms but he did not receive any calls etc. He reported that the alarms do not work and there are still leaks around the louvers etc. Seacoast should be asked if they received the alarm. If Seacoast cannot reach Sonny, they call John and then if John cannot be reached, the

Town Office will be called. Sonny said that Seacoast has his cell phone number and he can tell them when he is going to be out of town.

Attorney Larouche said that the Town should sign the Certificate of Substantial Completion, and should get Charlie to come up with a list for the next pay req. Decision should be made whether or not they are going to charge liquidated damages keeping in mind that this may lead to a lawsuit. Ed stated that they would like to make things work and limit the town's exposure. To get liquidated damages it would take a 2 ½ years and money in legal fees. He would recommend against charging the damages. If the town had been firmer last fall and actually started charging some damages, the construction company might have gotten it done faster but Rural Development recommended against it at the time.

In the meantime he recommended that the Board sit down with the Insurance Company to see if the town is insured for this. It should be more than covered. It should be disclosed to them that this is a "problem" contract and it is more than likely that there is going to be a claim on it. Marcus Ballou from Maine Municipal Association will be contacted. Deductible should be discussed. Attorney Larouche asked for a copy of it for his review. He will also take the contract and review it thoroughly.

Sonny thinks that we should stipulate that the pumpstation be free of alarms for one month. He also reported that he was contacted by Peter Quirion who did the earth work and he is wondering why he has yet to be paid.

The general contractor will not be paid until it is determined that all the subs have been paid and documentation received stating such. He suggested that subs be contacted to see if they have been paid. John said that he will review the contract with respect to warranties. Ordinarily it is one year from substantial completion.

There should be a punch list with the Certificate of Substantial Completion. Charlie should be e-mailed and asked for a punch list. Janet will contact Charlie to make sure all is included in the punch list, including the roof and the weather gauge problems.

Sonny stated that "Safety Works" (Department of Labor) came down and the station passed inspection. Eye wash stations were discussed and fire extinguisher inspections. They can be inspected by anyone as long as 4 points are covered and are signed off on the certificate.

Snowplow/Sanding Contract was discussed and Attorney Larouche said he could help with writing a contract but that there should be a sample or template contract that can be obtained from MMA. This year the current contract ends. The board has the right to refuse any and all bids. John said that if they want him to write up a contract, he can put one together.

Janet asked the Board to sign a pay requisition for **USDA**.

Peter Hanley made a motion to sign the **requisition** for the pump station in the amount of $60,906.12 to be received from USDA to cover bills paid. Ed Gorham seconded the motion. **VOTE – UNANIMOUS**.

At 10:40 a.m., John Larouche left the meeting.

Janet Richards presented the Board with 6 **quitclaim deeds** for the Board to sign.

Peter Hanley made a motion to accept the **resignation of Deborah Phair** from the **Board of Appeals** effective immediately. Ed Gorham seconded the motion. **VOTE – UNANIMOUS**.

RECESS FOR 5 MINUTES.

Return from recess. John Crocker asked the Board for **an executive session**. Ed Gorham made a motion to go into executive session per **1 M.R.S.A. §405(6)(a)** for a personnel issue. Peter Hanley seconded the motion. **VOTE – UNANIMOUS**.

Executive Session began at 11:54 a.m. Returned from Executive Session @ 12:08 p.m. with no decisions or votes being taken.

Peter Hanley made a motion to adjourn the meeting. Ed Gorham seconded the motion**. VOTE – UNANIMOUS.**

Meeting was adjourned at 12:09 p.m. Next meeting is Tuesday, **April 26, 2011 @ 6:00 p.m.**

Respectfully submitted,

Lynn R. Mealey