

A special meeting of the Town Board of the Town of Moreau was held on April 5, 2011 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing the needed repairs to a culvert on Hatchery Road and to discuss whether or not to commence a proceeding under the Eminent Domain Law to acquire necessary easements so that the needed repairs to the culvert can be made.

Supervisor Jenkins called the meeting to order at 7:00 p.m.

The Town Clerk called the roll.

Town Board Members Present

Tom Cumm	Councilman
Bob Prendergast	Councilman
Gina LeClair	Councilwoman
Todd Kusnierz	Councilman
Preston Jenkins	Supervisor

Town Board Members Absent

None

Also Present: Jeanne Fleury, Town Clerk; Jesse Fish, Water Superintendent; Paul Joseph, Highway Superintendent; Martin D. Auffredou, Attorney for the Town; Karla Buettner, Attorney from Bartlett, Pontiff, Stewart & Rhodes, representing the Town of Moreau; Lydia Wheeler, Post Star Reporter; and the following Town Residents: Richard Hughes, Ed Cross, Linda Zimmerman, Karen Carayiannis, Krista & Wade Valla, Elizabeth Lanfear, David Owens, Charles Roberts, Bruce & Jane McFarlane, Gregory & Dawna Miczek, Brenda Brooks, Laureen & Donald Martell, David & Jenny Lortz, John & Lisa Hogan, James & Michele McGinley, Randi & Sheri Gibbs, David Karasz, Jack & Beth Celeste, Bruce & Wendy Candiano, Melissa Smith-Streicher, Adele Kurtz, Harvey P. Wolfers, representing Mr. & Mrs. Howard Cross, and Steven VanGuilder, President/CEO of the Moreau Emergency Squad, Inc.

Supervisor Jenkins led the Pledge of Allegiance.

Supervisor Jenkins welcomed everyone to the meeting and asked that everyone turn off or put on vibrate all electronic communication devices.

Supervisor Jenkins explained that the meeting was called to try and create an understanding about an issue that the board has been working on trying to resolve for a year now, that involves a culvert on Hatchery Road. There have been negotiations and they are at a dead end. He said the board members would give comments first, and then the meeting would be opened up to the public. He asked that everyone honor everyone else here, and he asked that everyone speak in a peaceful manner with no personal attacks. If anyone acts contrary, they will be asked to leave.

Councilman Cumm started by saying that they were at this meeting to talk about the possibility of an eminent domain for a very small piece of land. It would not be a take-over of the property rather it is an easement that is needed on about ¼ of an acre of land. The whole board agrees, that an eminent domain proceeding is the last thing the board wants to do, but it appears that it has come down to that. He was ready to move forward on this tonight.

Howard Cross asked the supervisor to read the following statement that he gave a copy of to every property owner along Hatchery Road:

“Hello, I am Howard Cross, your neighbor on Hatchery Road. I am writing this letter in defense of myself, and also as a concerned resident of the Township of Moreau. As you all know the culvert on Hatchery Road needs to be replaced. It has been in need of replacement for over a year, and has been neglected

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long before the road was closed by the Town. Now they wish to make it appear that I am the cause of the culvert not having been replaced. This is simply not true. I have made every effort to negotiate a just compensation for what they are asking me to give to them. I am sure many of you have read the article in the Post Star in regards to this matter. Please understand that my failure to comment on their questions and comments does not give them credibility. Here are the facts. In late fall 2010 I was approached by Preston Jenkins and Joe Patricke, and they asked me to give them a permanent easement on almost $\frac{1}{4}$ acre of my land in exchange for \$1.00 compensation. This means they wanted me to give up all rights to use said property as I may see fit, but I would still own it. Therefore, I would retain the obligation to pay all taxes on it, as well as, the fact that I would assume all liability on it. At that time I was given two options. One in which they would need an easement, and the second one which would not require an easement. The second option involved retaining walls, and they would stay within their own right-of-way. After reviewing the easement agreement I chose to go with option 2, which they could do without such easement. When I told them I wished to go with option 2, they were very upset and rejected it. They had already hired an out of the area company to draw up the plans for option 1 and spent over \$12,000.00 to do so without first approaching me about whether or not I would give them use of my land. They also hired a land surveyor to draw in plots on the plans. They took use of my property in order to survey this area and placed markers without my knowledge or permission. Over the course of the next couple of months, now heading towards winter, they decided to downsize the requirement for a permanent easement to a smaller degree. I considered it to be that they didn't want to be liable for property that I would no longer have use of with no mention of just compensation for my loss so I told them that I would choose option 2, a retaining wall, which would not require me to give up my property rights. At that point it was already winter and too late to do the work required. I was then asked if I would sell the property requested. I was not interested in selling at that point. As time went on I could see that they clearly never intended there to be an option 2. In late winter I reconsidered their offer to purchase the property in order to expedite the work that needed to be done. At that time Preston Jenkins begin to negotiate with me on a price. He would not give me an offer and said for me to tell him what I wanted for the property. I gave him a price as he had requested. It was rejected by a majority of the board. They made no counter-offer to purchase the land, but offered more for the easement. I rejected their offer as I do not want property which I cannot use, but be liable for. Early spring 2011 Councilman Todd Kusnierz came to me, on his own, to try and negotiate once again for the purchase of the property which the rest of the board members continued to reject and had not made any counter-offers. They keep going back to the easement, not ownership if they need it, why don't they buy it. Why would they threaten me with eminent domain, when I am clearly willing to sell it to them? They simply will not negotiate with me. As a caring neighbor and friend I just wanted you to know the truth in all of this. This could happen to you. How would you feel if someone wanted to take over permanently $\frac{1}{4}$ acre of your property for the sum of \$1.00? Doesn't that sound outlandish to you? I pray that you never have to become the victim of this kind of political bullying by government officials. It is clear now that there was only one option on the table from the beginning, and they have been trying to intimidate me into giving into their demands by publicly humiliating me, and painting me as an obstructionist. This is truly not the case. The only consolation in this matter is the fact that they have opened my eyes to see how these people operate. I will change the way I vote in the future. It is nice to know that there is at least one member of the board who cares about our rights as a property owner and is not afraid to stand up for you. Councilman Todd Kusnierz is the only one who has approached us with integrity, fairness and respect. It is nice to know that someone on the board is on our sides as taxpayers. Sincerely, Howard C. Cross"

Supervisor Jenkins refuted one statement made in the letter from Mr. Cross by saying that there was a counter-offer made by the Town Board.

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Councilman Prendergast stated that there have been quite a few meetings on this and all but one was held in executive session. It was discussed in executive session, because the board was discussing negotiations. The only intent of the board was to open a public road. Different members of the Town Board, including Councilman Kusnierz, approached Mr. Cross to discuss with him what the board was willing to do to please Mr. Cross so they could get on the property. He said his feeling about this meeting was that he wanted to hear first hand from Mr. Cross what the downside was to the town bringing equipment onto the property to replace the culvert and open the road to the public. It is a small piece of property. We don't want to buy it. We represent the entire town and we don't understand why anybody in this town would want to own that piece of property, but we do understand why the public would like to have the road open for its' use. There is no reason to buy the property, because the people he represents don't want it, but they do want to use the road. It was his understanding, after an executive session that an offer was going to be brought to Mr. Cross and he knows what that offer was. He also knows what the property is assessed for, and knowing what the town's offer was, it was in his opinion an extremely generous offer. If the people here tonight knew what the assessed value was, and what the offer was, they would agree that it was extremely generous. He repeated again that the town doesn't want the property when the town is done with it. All the town wants to do is open a public road.

Mr. Cross asked if he understood correctly, the town doesn't want any of his property, the town wants a temporary work easement to bore a hole and put an easement in.

Councilman Prendergast said that was his understanding.

Mr. Cross stated this was altogether different and if this was the case they could have just asked him and he would have told them to come and do it. He gave the highway superintendent permission to use his property for a turn-around. The request for an easement on ¼ of acre of his property is the problem.

Councilman Kusnierz stated the premise he has been operating under is an offer that was given to Mr. Cross in writing for a permanent easement for a limited area of about 30 feet by 30 feet around the culvert, and a greater temporary easement on ¼ of an acre. He asked if this was correct.

Attorney Auffredou stated this was correct. It is a one-time, temporary easement, for the purposes of letting the town have sufficient room for its equipment so the town can install a new culvert. Once that work is done the temporary easement goes away, but what remains is the easement on the smaller area.

Mr. Cross stated the permanent easement involves an area 24' x 30' over the town's 25' right-of-way. He said there isn't any problem over the request for a temporary easement. It is the permanent easement that is the problem. If the town is given a permanent easement then he won't be able to do anything with that portion of his property. He won't be able to plant trees on it, or build a building on it, or a dam, or whatever else he might want to do there, because the town has an easement there and for all practical purposes that property is worthless to him. What can he do with it is pay taxes on it and assume full liability if someone gets hurt on the portion where there is a permanent easement. He asked if there is an oil spill from a tanker, who is going to have to clean it up? The answer he gave was him, because he would still be the owner. If the town is the owner then the town would be liable. He was willing to sell that piece, because he doesn't want the liability. He asked the board if they would do it.

Councilwoman LeClair stated that she was not involved in the negotiations, but she thought there was discussion about not taxing that portion of the property and covering Mr. Cross under the Town's insurance and asked Attorney Auffredou if this was correct.

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Attorney Auffredou recalled that it was discussed with Mr. Cross about adding the easement area as an insurable interest of the town and offer an indemnification and hold harmless clause. He also recalled there was some discussion with the assessor about the assessment on the property and if there was a formula that could be applied to reduce the overall assessment of the property by some value, to be determined, based upon the easement area and based upon the concerns by Mr. Cross that he has articulated all along and those he articulated tonight.

Supervisor Jenkins said he discussed the same issues with him and he wasn't interested in that.

Mr. Cross stated that it was discussed with him, but he wasn't in agreement at that time. The last he knew Councilman Kusnierz was in negotiations with the board and the board never counter-offered. He said negotiations are negotiations and that is why when the town wouldn't make him an offer he gave the town his offer. He then saw in the newspaper where it was outlandish.

Supervisor Jenkins said he didn't have the authority to give him an offer without approval from the board.

Councilman Kusnierz said he wanted to clarify his role. He was not the negotiator. He said they were at an impasse and the Town Board wanted to move in one direction and it was his personal belief that they could solve the issue without going through eminent domain. In an executive session the board gave him permission to go back to the property owner and try to negotiate a lower price. He did this and brought a price back to the board. He thought he would get something to relay back to Mr. Cross, whether it was that the board didn't want to move forward or a counter-offer. That didn't happen. He got an e-mail saying that three board members decided to not accept the offer from Mr. Cross and that this meeting had been scheduled. He said it is a misrepresentation that he was a negotiator.

Councilwoman LeClair asked if they could disclose numbers now or were they still in negotiations.

Attorney Auffredou said there is nothing that says they can't discuss numbers here.

Councilwoman LeClair said she was going to say the numbers that she was familiar with. She stated that Mr. Cross originally wanted \$40,000.00 and then we had an appraisal done and it came in at \$100.00.

Attorney Auffredou stated that he wanted to clarify the \$100.00 value and what it means. He said this is an easement. It is not a fee simple acquisition. This is ultimately the acquisition of the permanent easement that has been described here tonight. In an eminent domain proceeding, under the Eminent Law, you look at what the damages are or the value to the property owner to the property being acquired by the town for a public need. The public need is the easement. The board had a professional appraiser look at this and he opined that the damages or value of the easement acquisition is \$100.00.

Councilwoman LeClair stated that the board discussed that \$5,000.00 was a fair offer and Councilman Kusnierz gave Mr. Cross that offer and Mr. Cross said he would come down to \$20,000.00. She stated that she can't speak for anybody else here, but she didn't think that in fairness to the taxpayers that she should have maybe even gone to \$5,000.00. That is the highest she feels she can go and vote for.

Councilman Kusnierz stated the cost of the appraisal was \$2,800.00 to be told the damages would be \$100.00.

Attorney Auffredou stated that the board could not go through an eminent domain proceeding without an appraisal of the property. It was his recommendation that the board, obtain an appraisal of the property and the board accepted his recommendation, and there were no objections voiced by any board member

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over getting an appraisal. He also told the board at that time what the cost of the appraisal would be and the board didn't object.

Councilman Kusnierz said that was how he presented it to the board and he supported that, but he didn't know the appraisal was going to be for damages. He thought it was going to be to determine what the property is worth and not the damages.

Attorney Auffredou replied that it is rather semantical. He told the board that he thought the appraisal would come in remarkably low. He was upfront with the board from day one on this.

Attorney Auffredou further stated that in an eminent domain proceeding, it is the value that is being removed from the easement area. It is not for the property.

Mr. Cross stated there are sixteen trees there; oak, ash and maple. The average cost to replace these trees would be \$300.00 each, at least. He asked where the \$100.00 came from.

Attorney Auffredou replied that the Town Board secured an appraisal from a highly qualified New York State Appraiser.

Supervisor Jenkins asked if anyone from the public wanted to speak.

Melissa Smith-Streicher from 167 Hatchery Road spoke next and read a statement to the board. The full context of the statement can be heard on the audio of the meeting that is on file in the Town Clerk's Office or can be found on the Town's website at www.townofmoreau.org.

Her statement was in support of Mr. Cross and property rights in general. As a taxpayer she hoped that the most affordable solution would be made, but not at the expense of their constitutional rights. She said it was a slap in the face for local officials to offer Mr. Cross \$1.00 for ¼ of an acre of land. She said an easement may sound kind, the local government allowing you the right to keep your own land, allowing you to pay taxes on your very own property, and yet the local government gets to use it for a whole \$1.00. She said any farmer would jump on a deal like that; use of a quarter of an acre for \$1.00 for a lifetime. She hoped that neighbors and fellow Moreau citizens could get together and back Mr. Cross. She went on to say that where eminent domain is concerned, you always hear words like, it is better for the whole neighborhood. Giving up a little for the betterment of the whole sounds awful un-American and socialistic to her. She then quoted Ron Paul. She stated that one of our neighbors, a fellow citizen, is being threatened with a proposition of losing his land, to what avail? She has spoken with many of her neighbors about the closure of the road, and the common consensus from those who work from home or spend the day at home, has been that it is wonderful. People use the road as a pass through to the dump. On any given day 20 large trucks, loaded down with garbage, speed by on their way to Hiram Hollow. It boggles her mind the interest of the kids, dogs and bicyclists and family life on this road would so quickly be thrown out the window for a shorter route to the Northway. She wanted to remind everyone of the 5th amendment to the constitution and cited same. She said she is questioning the due process in this room. Part of the 5th amendment she cited was: "nor shall private property be taken for public use without just compensation". She stated that Mr. Cross is not due fair market value for his property, he is due just compensation. This just compensation by law is to be figured on the best possible use of his property and that she said is from a New York State ruling. She said they should stand behind Mr. Cross. She said she has seen the other options and her conservative bones have a hard time saying this, but frankly, she doesn't see a price on protecting property rights. She told Mr. Jenkins that Moreau is a conservative town and that he seems to have forgotten this. As a property rights advocate and as a taxpayer she is here to say that Mr. Jenkins's very proposal and this board's of eminent domain, in this situation, has shown

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where their cards fall and she and her family will be first in line come voting day. She then quoted Justice Story on the fundamental of a free government and the rights to personal liberty and private property and how they should be held sacred. She thanked Mr. Cross for reminding her family of our freedoms and how quickly they can be taken from us and for fighting for his property rights.

Brenda Brooks asked Mr. Cross if he was willing to give the town a temporary easement to do the work and Mr. Cross replied yes. She then asked Mr. Cross about the permanent easement. She asked if the town indemnified him so he wasn't liable for anything that happened on the permanent easement portion and if the town was able to remove that portion from the tax rolls, would it come down to a simple dollar figure that was just compensation in his mind.

Mr. Cross said that is what they were trying to do in the beginning. He said the board wouldn't give a counter-offer.

Brenda Brooks asked if it was determined that the permanent easement portion of the property could be removed from the tax rolls.

Councilman Kusnierz replied that the board had discussions with legal counsel on this in executive session. He relayed that option to Mr. Cross.

Discussion followed amongst members of public and Mr. Cross.

David Karasz introduced Harvey Wolfers who is an engineer that accompanied Mr. Cross to the meeting. He said we are jumping the gun. He asked if we really need this mega plan. The culvert has functioned for 80 years.

Mr. Wolfers said he did a site visit last fall and observed the water being pumped out, and a large pond of water. He said there is a series of springs that flow together under the road. He said the major part of the repair is not the actual installation of the culvert, but making way for the work by getting rid of the water. He wasn't in a position to propose a specific plan, but he has a concept in mind that would eliminate all the debate about easements. He said a mega culvert is not needed to handle the amount of water that flows there. He isn't able to stipulate how much water or what size culvert, because he hasn't taken measurements. He thought the engineers saw an embodiment of water there and not a little stream and based their design on what they saw at the time. He believes the proposal is overkill and could be accomplished with a lot less space requirement.

Supervisor Jenkins advised that DEC has requirements that we have to follow, because there is a stream and wetlands that are subject to their ruling.

Wade Valla the property owner on the other side of the culvert said the question is not so much the diameter of the culvert or how much water, but the length of the culvert and how much it would protrude onto their properties. He recalled that plans called for 1 on 2 angle of the slope on his side of the road, which may be more than the minimum requirements. He thought they could go with a 1 on 1 and cut down on the length of the pipe. This should be considered.

Supervisor Jenkins understood that the design was based on DEC requirements.

Jennifer Lortz asked if a representative from DEC was present and the answer was no. She said she understood that DEC was concerned over the flow of water from Mr. Cross's property into the stream and that was the reason there weren't any trout in the stream.

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Supervisor Jenkins said they weren't talking about fish, but rather the wetlands beyond it.

Jennifer Lortz asked how long the wetlands would be respected, when the quarter acre is used with heavy equipment on it and tearing everything down in its' path, and it will be left that way. She stated that there were bald eagles on Mr. Cross's property that have abandoned the site, because of the noise from the pump. Her yard is filled with diesel fumes and she can't open her windows and both she and her husband have asthma. The vast majority of the time when she leaves her home she travels east on Hatchery Road and she will continue to do so before she sees any of these things happen that are being proposed here tonight.

Bruce McFarlane said the board made it obvious what their intentions are. He said the board paid over \$2,000.00 so they could proceed with eminent domain. He said that the board is saying that they represent the taxpayers. Well there are a lot of them here tonight and none of them want to see this happen. He is against eminent domain. He will fight the board every step of the way to help Mr. Cross out. He said the town has spent \$50,000.00 to pump water from one side of the creek to the other, yet when Mr. Cross asked for \$40,000.00 the board thought it was extravagant. He said give the man his money and move on. He said the road has been closed long enough. The school buses can't come down the road, and yet the taxes have gone up. He has contacted a lawyer to raise a suit against the town to get their taxes back. Two realtors have said his property is worth \$50,000.00 less, because the road is closed and school buses can't get through. He said the only person doing anything on the board is Mr. Kusnierz.

Beth Celeste stated she didn't expect to live on a dead-end road. She got a call from the school district asking her what end of the road she wanted her kids to walk to so the bus could pick them up. The road needs to be opened. An agreement has to be reached and the road opened.

Councilman Kusnierz stated that he was willing to offer a figure if everyone present was agreeable to hearing it.

Mr. Cross said put it out there.

Mr. Valla said he was willing to listen as long as he didn't have to formally agree to it tonight.

Councilman Kusnierz said that along with putting a figure out there, he assumes the following:

1. The town would maintain a permanent easement in the smaller area.
2. The town would be allowed to utilize the ¼ acre for construction purposes, which would be a temporary easement, and for the area where the permanent easement would remain in place the property owners would be held harmless from liability.
3. The town would investigate the possibility of reducing the assessment for that portion of the property, if it could be done legally.

Attorney Auffredou said this was possible, but people shouldn't construe this to translate into a reduction in value of the property for purposes of tax assessment.

Councilman Kusnierz concurred and said that would not be the intent of what they were trying accomplish here.

Attorney Auffredou said there is nothing that Councilman Kusnierz just said that presents a problem legally.

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Councilman Kusnierz then said he would offer \$7,500.00 to each property owner so that we can move forward with construction on that site under the above terms, and subject to review by the property owner's attorneys before all parties involved sign off on it.

Mr. Cross asked about his attorney fees and asked if the town was going to pay for them.

A resident behind Mr. Cross said that would be "us" paying for his attorney fees, and she stated that she didn't want to pay his attorney fees. She also stated that she doesn't want to drive down the road four times a day to meet the school bus either, but that is what she has been doing.

Mr. Cross replied that isn't his fault. He isn't the one that shut the road down. He then said she was lucky it was shut down, because there was a hole in the road and suppose there were kids on a bus when that happened.

Councilman Kusnierz stated that he wanted to qualify the figure he arrived at. Number one, he is looking at it from the standpoint that the town wouldn't have to use easements. That is a very expensive option and he wouldn't be surprised if it exceeded one half of a million dollars or more, so the taxpayers would save on that. Number two, If we can come to a resolution this evening, we won't have court fees, and attorneys fees going forward, and we can move forward now, and not tie it up in the courts. Also, the property owners would be receiving compensation. What we offer one landowner on one side of the road we offer the same amount to the property owner on the other side of the road.

Councilwoman LeClair stated that she would be willing to go \$5,000.00.

Councilman Prendergast said he hoped the public realizes that we made a statement of what we offered earlier, and three statements later, and one even in writing centered on \$1.00. We have been away from \$1.00 for months, because we wanted to resolve this. \$5,000.00 is a lot of money, and as one lady pointed out it is taxpayer's money. We just hold it for the taxpayers, and try to spend it efficiently.

Councilman Kusnierz stated that there are semantics here as our attorney pointed out. The town has officially, in writing, only offered the property owner's \$1.00. If anybody has a document that reads otherwise, then he isn't aware of it.

Councilman Prendergast stated that Mr. Cross mentioned earlier that Councilman Kusnierz went down and offered him \$5,000.00.

Mr. Cross agreed and said he countered, but the town didn't counter back. He said the town didn't want to negotiate anymore, but the town shouldn't lay it on him that he shut the road down and inconvenienced everybody.

Councilman Prendergast replied that \$5,000.00 is a lot of money and it is taxpayer's dollars.

Mr. Cross said he was saving the town a fortune by giving a permanent easement. We are talking about one half of a million dollars to put up an abutment wall. We are talking big bucks here.

Councilman Prendergast said they weren't going to spend one half of a million dollars.

John Hogan spoke next. He said the residents were brought here tonight to talk about an eminent domain proceeding. He asked how much it costs to go through an eminent domain proceeding.

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Attorney Auffredou stated that the town has secured an appraisal. Legal wise going forward it is hard to say what the legal fees would be. It all depends on the level of opposition. Once the proceeding is filed the property is actually acquired by the town. The town automatically acquires the interest in the property. The question then becomes what is the just compensation, and that would be the question for the court. That is when the proceeding could be prolonged. The town has its appraisal, and the property owner could get an appraisal and submit it. Given the nature of the easement here, it is not a large tract, it is not commercially zoned property, and it is a relatively rural area, he didn't think it would be a very long proceeding which means it wouldn't be a very expensive proceeding. He estimated that the legal fees would be several thousands of dollars.

Mr. Hogan stated that perhaps it might be worth \$7,500.00 to get out of this, and then the board won't look like the bad guy by going eminent domain, and just get it resolved. If the board could get it resolved tonight, then the town wouldn't have the expense of continuing to pump water down there.

Attorney Auffredou said he made a valid point, but what he wasn't bringing into the argument is that the proof of damages is \$100.00. This is what the board is struggling with. He understands that there is always value in trying to resolve things, and it isn't his recommendation that the board not try and resolve it. If the board chooses to go through the eminent domain proceeding, and pays his law firm to cover that, the fact is that based upon what the town has secured for an appraisal the court would award \$100.00.

Supervisor Jenkins stated that for the past three years, at two meetings a month, the board has argued over \$200.00 to \$500.00 purchases, and now we are talking about \$15,000.00. When he took the job he felt that his job was to protect the resources of the community and move it ahead. Based on what the legal expenses will be, and what it will cost before we are done, he can probably support the \$15,000.00, but he won't be happy about it.

Mr. Cross stated that by putting the culvert in at that price you are saving a fortune. He said if the town goes eminent domain then the town will lose. If it goes through the appellate division or the court of appeal, where will the town be then?

Attorney Auffredou wanted everyone to understand where they are at procedurally and legally. He said if Mr. Cross is correct and it goes through the appellate division or court of appeals or whatever the case may be, the culvert that has been designed and that the town wants to install, would have been installed long before that. We are talking about a just compensation issue, the value. We are not talking about going in front of the court to determine whether or not there are alternatives, or what is the best technology. The board decides if there is a public need, and if the board decides that, and if the board decides this is the solution to the culvert that really is essentially within the board's call. The only discretion that the judge has is to determine a just compensation, and not to determine if the board made a correct call or not on whether or not there is a public need or whether or not the technology is the proper approach.

Supervisor Jenkins stated that there wasn't a single person on the board that is for eminent domain. He is a property owner and he wouldn't want someone to take his property. He understands that. Property is very valuable and rights should be protected. However, we have a road that any day now could wash away. There is water running underneath and not through a culvert.

Councilman Kusnierz asked Supervisor Jenkins if he supported the \$7,500.00, and Supervisor Jenkins said yes.

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Councilman Prendergast stated that the board needed the appraisal in case they couldn't resolve the issue. He said they had to position themselves to be ready to open the road, and they were going to open the road. He said they were told in executive session that the price would come back very low. He told Mr. Cross that even with that information he suggested the board offer him \$5,000.00, because they don't like eminent domain. They don't even like the term, and they do respect people's rights. He said he made the \$5,000.00 offer that the board said okay to, even though he heard that if they got an appraisal the price would come back very low. He said that should say something. It should at least say that the board does care about people's property. Why wouldn't he come back with a very low amount when they were told it would come back very low? Rather, he came back with \$5,000.00 and it is taxpayer's dollars. He said at the beginning of the meeting that he thought \$5,000.00 was a good offer.

Councilman Kusnierz said he thought there was confusion over just compensation vs. appraised value. Our expert is looking at an appraised value for damages to the property when we go on it. He was looking at it from the perspective of just compensation. There is a huge difference and those numbers can be significantly far apart.

Attorney Auffredou told Councilman Kusnierz he wanted to make sure that he understood his legal position. If the court accepted this appraisal, the court would say that the just compensation is \$100.00.

Councilman Prendergast said the town could settle this for \$100.00 just compensation, but the board doesn't feel that is just compensation. The board feels that a person's property means something, and that is why they offered \$5,000.00.

Supervisor Jenkins asked how he felt about \$7,500.00.

Councilman Prendergast said \$5,000.00 was a good offer.

Councilwoman LeClair stated that \$5,000.00 is really \$10,000.00. Mr. Valla hasn't come to the board and asked for money. He has worked with the board. However, if we give Mr. Cross \$5,000.00 then it is only right we give Mr. Valla \$5,000.00. Therefore, in her mind it is a \$10,000.00 offer to work with Mr. Cross, and in fairness you each get \$5,000.00. We would not be in this position if the board had been able to work this out with Mr. Cross prior. She is sorry we are at this point.

Wendy Candiano asked if \$7,500.00 would resolve the issue then why not do it. She stated that she has a heart condition, and if an emergency vehicle can't get to her in time if she is having a heart attack then how can they put a price tag on that.

Supervisor Jenkins stated that the goal of the board is to take care of the two property owners involved and get the project done. He is sure that most of the people in this room tonight think this is probably the right thing to do, but there are another 13,850 people in the town that may think we are doing the wrong thing.

Councilman Cumm stated that he hates eminent domain. To put this behind us he was willing to agree to the \$7,500.00 offer to the two property owners.

Attorney Auffredou stated it would be his understanding that the \$7,500.00 would be for the right to a temporary easement, the right to a permanent easement on both sides, a reciprocal for Mr. Valla and Mr. Cross on the indemnification and hold harmless. We can't decide tonight, without the assessor's assistance, what the value of the reduction in assessed valuation will be. It is his opinion that it will be a very, very small reduction in assessed valuation given it is an easement adjacent to a road or a culvert. He

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didn't want anyone to walk out of here thinking that the town is considering, or would be able to consider, some enormous reduction in assessed valuation, because the town has a 20'x30', or 30'x40' permanent easement associated with a culvert. These are the basic elements of what the town would be looking for in an agreement for both Mr. Valla and the Cross's.

Councilman Cumm asked if Mr. Valla was okay with this and Mr. Valla said yes.

Councilman Kusnierz thanked the board members for coming to a resolution on this. It was his feeling from day one that this issue could be resolved through negotiations, and that we didn't have to use eminent domain. He is very happy with the outcome, and he thanked his colleagues who worked with him on this.

Karen Carayiannis said she hoped that everyone has learned something. Preventive maintenance could have prevented this. We should go back through our maintenance plans. This was a fiasco, and she hoped it would never happen again.

Attorney Auffredou phrased the language for the resolution that the board was considering adopting as follows: To resolve the temporary and permanent easement acquisition issues involving both the Valla property and the Cross property on both sides of Hatchery Road for a sum certain of \$7,500.00 to each property owner; each property owner would receive indemnification and hold harmless from the town within the permanent easement area, each property would receive some level of attention for reduction, perhaps de minimus, but to be determined as to the value of the easement reducing the overall tax assessment of their respective parcels, subject to the preparation of agreements by counsel, and subject to further review of those agreements by each of the Town Board members, and upon review of the agreements the board authorizes the supervisor to sign the agreements on behalf of the Town.

Attorney Auffredou said he wanted to make it clear for the record that it is the understanding of the Town Board based upon the deliberations and discussions at this meeting that Mr. Cross and Mr. Karasz, represent the owner of the property, Cheryl Cross, and that she is willing to enter into an agreement based on these terms, and that Mr. Valla is willing to enter into an agreement with the Town based on these terms. For the record he also stated, it would be appropriate for the board to ask Mr. Cross and/or his representative, and Mr. Valla, before a motion and second is made if this is their understanding and they are willing to do this.

Mr. Valla stated that he and his wife own the property jointly. He stated that he sent an e-mail to Supervisor Jenkins with some outstanding issues with the temporary and permanent easement, mainly around dates and lengths of the temporary easement that he would still like addressed, but in principle they agree with what has been discussed.

Attorney Auffredou said he would discuss this with the engineer and highway superintendent, and try to get him a time frame and a reply would be sent to him on town letterhead.

Mrs. Candiano asked the board to contact the school superintendent and ask for their assistance with the buses.

Elizabeth Lanfear asked if the contractor that submitted the lowest bid for the work on the culvert was willing to hold his price.

Supervisor Jenkins stated he would verify this.

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Elizabeth Lanfear stated her dismay that to-date the highway department employees are still not certified in confined space.

The supervisor responded to her question.

A motion was made by Councilman Kusnierz and seconded by Councilman Cumm to adopt the following resolution:

To resolve the temporary and permanent easement acquisition issues involving both the Valla property and the Cross property on both sides of Hatchery Road for a sum certain of \$7,500.00 to each property owner, each property owner would receive indemnification and hold harmless from the town within the permanent easement area, each property would receive some level of attention for reduction, perhaps de minimus, but to be determined as to the value of the easement reducing the overall tax assessment of their respective parcels, subject to the preparation of agreements by counsel, and subject to further review of those agreements by each of the Town Board members, and upon review of the agreements the board authorizes the supervisor to sign the agreements on behalf of the Town.

Roll call vote resulted as follows:

Councilman Cumm	Yes
Councilman Prendergast	No
Councilwoman LeClair	No
Councilman Kusnierz	Yes
Supervisor Jenkins	Yes

Supervisor Jenkins stated that he voted yes, but it was a difficult thing for this board to do. Next Tuesday night the board will sit here and argue about a \$600.00 or \$700.00 expenditure. This is a difficult decision for the board and he hopes the public understands that.

Brenda Brooks stated that this is a \$15,000.00 issue minus the \$100.00 appraisal figure equals \$14,900.00. She believes that the town would spend more than \$14,900.00 in legal fees to go through an eminent domain process. She understands that \$14,900.00 is a lot of money and she appreciates all the work the board does, but in her mind she can at least justify this amount.

Supervisor Jenkins stated that was why he voted yes, because if it cost us that much, and we would have mistreated a couple of taxpayers, and it could have gotten pretty ugly.

General discussion followed.

A motion was made by Councilman Cumm and seconded by Councilwoman LeClair to adjourn the meeting at 8:45 p.m.

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Roll call vote resulted as follows:

Councilman Cumm	Yes
Councilman Prendergast	Yes
Councilwoman LeClair	Yes
Councilman Kusnierz	Yes
Supervisor Jenkins	Yes

Meeting adjourned.

Respectfully submitted,

Jeanne Fleury
Town Clerk