

APPROVED

Board of Selectmen / Sewer Commissioners Meeting

Tuesday July 10, 2018 – 5:00 PM – Richmond Town Hall, 1529 State road

PRESENT: Mr. Neal Pilson, Chair; Mr. Roger Manzolini, Selectman; Mr. Alan Hanson, Selectman; Mr. Mark Pruhenski, Town Administrator

ABSENT:

GUEST: Ms. Beth Goodman, Town Counsel; Mr. Steve Traver, Richmond Fire Chief; Mr. Fran Malnati, Constable; Mr. Tom Grizey, Constable; William Bullett, Police Chief, Mr. Eric Latimer, Constable

Mr. Pilson opened the meeting at 5:00 PM and announced that the meeting would deal with the status of Richmond's Constables. Mr. Manzolini stated for the record that the Board has no issue or concern with the conduct of the town's constables and that it is the Board's desire that it will be possible for our constables to continue to serve Richmond as they have. The reason this meeting is necessary is so that the Town can take the necessary action to come into compliance with Massachusetts General Laws.

Ms. Beth Goodman, Legal Counsel for Richmond, noted that she would be providing her interpretation of the laws in question and options to address them. She also spoke to her awareness that it has been common practice for the small towns in Western Massachusetts to use constables to direct traffic but that she now sees the situation changing. Ms. Goodman reported on a conference she attended with Mass DOT concerning who could direct traffic on State highways. The result of that discussion was the creation of new regulations that provided for special training for people who are not public safety or police officers so that they could legally direct traffic on State highways. That is the situation that currently obtains. If you are directing traffic on a State highway, you must either be a Police Officer (most commonly a State Police Officer) or you must have had the training and become a Certified DOT Road Flagger.

Ms. Goodman's suggestion would be to take the option to have anyone who would be used to direct traffic on a State road take the training and become a Certified DOT Road Flagger, which would protect the Town from liability. Ms. Goodman noted that her research into this question first occurred when she was asked whether there was a mandatory retirement age for constables, such as there is for the Police Department. Police Officers are a specific category under Public Safety Officers and it is not clear whether Constables fall under that category. Ms. Goodman contacted the State Retirement Administration with that question and in March received an Opinion from that body that stated that Constables are not Public Safety Officers and are, therefore, not subject to mandatory retirement. In the comment section of the Opinion Letter, the statutes that created the position of Constable were reviewed (General Law Chapter 41 Section 94). Section 94 describes what Constables do. They have the power to serve Notices, Warrants, Executions and Evictions. In commenting on that statute, the Retirement

Board said, "You will notice that constables are performing traffic details. Even if Section 94 permitted a constable to perform details, which it does not appear to do, they are not "a uniformed member of a Police Department." "

Ms. Goodman said the opinion that constables are not Public Safety Officers and are not authorized to do traffic details under General Law Chapter 41 Section 94, led to the request for Ms. Goodman to draft a memo asking whether constables are authorized to perform traffic details on State and Town roads. The answer concerning State roads has been answered – only with certification as a DOT Flagger. Which leaves the question of whether constables can perform traffic details on Town roads. Ms. Goodman recommended that the Town use only Police Officers or Certified DOT Flaggers on town roads as well. That would eliminate the possibility of liability for the use of untrained personnel in a traffic accident.

Ms. Goodman added that in her research into this question, she noted that Williamstown, which used to use Constables for traffic details is no longer doing that. She did, however, find other towns that passed bylaws that specifically allowed the use of Constables for Traffic Details. Richmond can pass such a bylaw at a Town Meeting, but Ms. Goodman would still recommend that the town only use Constables who have DOT certification. She suggested that it might be helpful to contact the Town's insurance carrier to determine their stand on the matter.

Ms. Goodman also noted that she was told that Richmond also uses Constables to respond to emergencies, which raised the question for her of what role they played at such times. Mr. Pruhenski added at this point that there are other issues for the Town. Not only do we have Constables doing traffic details and acting as First Responders, we also have some Constables who are wearing Police uniforms and some who have blue lights on their vehicles. Mr. Pruhenski expressed his concern for the Town's liability in case an accident occurred that was caused by a Constable in responding to an emergency or in directing traffic. Mr. Pruhenski also noted his concern with the lack of training the Constables have in dealing with these kinds of situations.

Mr. Pilson asked Ms. Goodman about her suggestion to pass a bylaw: Would the Board have the authority to draft a bylaw that would include language requiring that Constables have DOT training or that stipulated such training was not required. Ms. Goodman replied that the Board could draft the bylaw as they saw fit and then present it to the Town's voters at a Town Meeting. It was clarified that such a bylaw would apply only to Town roads as the DOT has already promulgated regulations covering State highways. Mr. Pruhenski said that he anticipates there will be a Special Town Meeting in October of this year, where the issue could be addressed.

Mr. Pilson agreed that a small town such as Richmond should continue to maintain a Constable service and that it was his intent to find a way to continue to have Constables working with the

Town. He added that it is also necessary for Richmond to be in compliance with State law and to consider issues that relate to Town liability, so the issue is to find a way to do that.

Mr. Manzolini asked for the correct terminology for people with the authority to direct traffic on State Roads. He was advised that the DOT's title is "Certified Road Flaggers." He then asked whether there were any Certified Road Flaggers in Richmond and was advised that Mr. Mike Lamke and Mr. Bob Navin were. There was a discussion of how frequently the training to become Certified had to be done. Mr. Latimer believed the training was good for a two or three-year period. Mr. Manzolini asked the Constables present whether any of them would object to taking the training. The response was there would be no objection if the training were offered locally and did not include a trip to Boston. Mr. Manzolini felt that making that training available locally, if that were possible, would be a smart thing to do for the Town's Constables and perhaps for the Town's Firemen, as well. Mr. Pilson noted that he would ask the Town to cover any fees involved in this training. Mr. Manzolini agreed.

Mr. Hanson raised the issue of whether there was a mandatory retirement age statute as there is for the Police Department. Mr. Goodman reiterated that there was no such restriction for Town Constables. Mr. Latimer, however, said he thought there was an age limit for Certified Road Flaggers, which he believed was 72, which would eliminate all the men in question. Mr. Pruhenski will check on the age limit for Certified Road Flaggers and, if that is the case, that issue will be dealt with separately.

Mr. Pilson then moved the discussion to issues raised by Mr. Pruhenski: wearing police identification and having blue lights on their cars. He asked if there was authorization for those practices anywhere in State regulations. Ms. Goodman said the wearing of police uniforms is allowable only for actual police officers. Ms. Goodman said that it would be allowable for the Town's Constables to wear uniforms identifying them clearly as Constables, but not something that could be mistaken for Police. Mr. Manzolini suggested that the Road Flaggers should be wearing bright yellow or orange reflective vests to enhance their visibility. He felt it would not need to identify the wearer as anything other than a Road Flagger.

Mr. Manzolini said that he felt that authorizing a bylaw that permits Constables to direct traffic just on Town roads does not address the problem as much of the work being done tends to be on State Road. In that case, Mr. Manzolini felt that the Town should have only Certified Road Flaggers providing that service. That would eliminate the need for a town bylaw and would eliminate the need to consider which road or roads would be involved in any planned work.

Chief Traver raised the issue of firefighters needing to direct traffic in certain situations and Mr. Manzolini agreed that they should also become Certified Road Flaggers for just that reason. Mr. Hanson offered the opinion that firefighters always take precedence in an emergency as far as controlling traffic and keeping the public safe.

The next issue for discussion was the use of blue lights in cars. Mr. Pilson was advised that all the Constables carry blue light permits for their cars, which come through Chief Bullett from the

Motor Vehicle Bureau. Ms. Goodman asked what the purpose of the blue lights was. Chief Bullett authorized the use of blue lights as identification for Constables responding to emergency situations and as a readily recognizable authority for drivers to respond to direction from them. Ms. Goodman said that since the constables have legal authorization to have the blue lights in their cars, and since they use them to identify themselves as the authority to direct traffic in the event of an emergency, she saw no conflict or problem. Therefore, if the constables become Certified Road Flaggers, with the authority to direct traffic, they also need the blue lights.

Mr. Pilson invited the Constables to address any questions they had to the Board. Mr. Latimer said he wanted to discuss training, but Mr. Pilson thought it advisable to resolve the question of an age limit first. Ms. Goodman will do some research to determine if there is such a limitation. Mr. Pilson said that if it turns out that there is some age prescription for Certified Road Flaggers, the Town should consider passing a bylaw for Town Roads only that has no age restrictions for persons deemed capable of providing that service by the Board of Selectmen. Mr. Pilson agreed that he would support that action as the Board wants to keep the Constable concept working in Richmond. In fact, Mr. Pilson felt that the Board would be willing to draft a bylaw that specifically addresses maintaining a Constable presence in Richmond if needed.

A discussion followed concerning when and where such training would be available. A further question was raised as to whether there is a requirement for a Certified Road Flagger to be armed with a sidearm while directing traffic. That question will be researched as well as all guidelines pertaining to the DOT's Certified Road Flagger position.

Mr. Pilson summed up as follows: The Town's Constables will all be asked to take the training to become Certified Road Flaggers allowed to direct traffic on State roads. If there is an age restriction that eliminates the Constables, then the Town will draft a bylaw that provides authorization for Richmond Constables to do traffic duty on Richmond Town Roads only. The Town would still require that all Constables take the training, even though the State will not Certify them as Road Flaggers, so that the Town will have some liability insurance related to their service.

Mr. Grizey recounted a conversation he had with officers of the County Sheriff's office concerning their training for traffic control. He was advised that they did not take any special training. Ms. Goodman advised that the Sheriff's office deputies were considered peace officers and identified in the same way as the Police. Mr. Grizey noted that he went through the Police Academy and felt he was to be considered a Police Officer. Ms. Goodman said that, since Mr. Grizey is not employed by the Town as a Police officer and as he has gone past the mandatory retirement age for police officers, he could not use that as authorization to direct traffic.

Mr. Manzolini said that the Board is happy with everything that the Town's Constables have been doing. Their objective is to maintain a Constable force in Richmond and protect the Town and the Constables from liability by adhering to State Law. The following plan was decided upon

based on the above information: Research will be done to determine if there is an age limit for Constables acting as Certified Road Flaggers. If such an age limit obtains, the Town will pass a by-law, permitting the use of Constables for traffic duty on town roads. The Town will research where and when the next round of training for Certified Road Flaggers will occur. The Town will ask all Constables to take that training and the Town will cover the expenses associated with it. The Town will cover the cost of obtaining the proper high-visibility vests for everyone doing traffic control duty. Constables may wear clothing identifying them as Constables, but not as Police. Constables have authorization from Chief Bullett to have blue lights in their vehicles for use during traffic control duties. Other duties already included in the statutory definition of Constable will continue to be within the purview of the Constables.

There being no further business before the Board, Mr. Pilson moved that the meeting be adjourned. He was seconded by Mr. Alan Hanson and the motion was carried by unanimous vote.

The meeting was adjourned at 5:44 PM.

Mr. Neal Pilson
Chair, Richmond Board of Selectmen


