



SELECT BOARD MEETING AGENDA

October 3, 2022

Senior Center
75 Groton Road
N. Chelmsford, MA 01863

1. 6:30 PM CALL TO ORDER
2. CHARLES WAY ROADWAY IMPROVEMENT AGREEMENT

Documents:

[CHARLES WAY AGREEMENT.PDF](#)

3. EXTINGUISH SEWER EASEMENT AT 255 PRINCETON STREET
4. SIGN WARRANT FOR OCTOBER 20, 2022 SPECIAL TOWN MEETING
5. ADJOURN

NEXT REGULAR MEETING DATE: **October 11, 2022**

ROADWAY IMPROVEMENT AGREEMENT

This Roadway Improvement Agreement (“Agreement”) is made and entered into on this _____ day of October, 2022 by and between the Town of Chelmsford acting through its Select Board (the “Town”) and Michael Shyjan (“Shyjan”) individually, and with all parties hereto collectively referred to as the “Parties”.

WHEREAS, Shyjan owns property abutting a private way located in the Town of Chelmsford known as Charles Way;

WHEREAS, Charles Way was approved as a definitive subdivision approval by the Chelmsford Planning Board on November 7, 1984;

WHEREAS, the applicant for the Charles Way subdivision was the Fre-West Realty Trust, pursuant to a Declaration of Trust dated November 21, 1984;

WHEREAS, the holders of the beneficial interest in the Fre-West Realty Trust were Charles W. Morgan, Robert F. Fredo, Jr., and C. William Wester;

WHEREAS, on September 4, 1985, pursuant to G. L. c. 41, § 81U, the Fre-West Realty Trust entered into a Tri-Partite Agreement with the Town and the First Service Bank For Savings in the amount of \$104,000.00 to secure completion of the construction of ways and the installation of all municipal services for Charles Way;

WHEREAS, the Chelmsford Planning Board informed the Fre-West Realty Trust in April, 1989 that they had forty-five (45) days to complete the work on Charles Way;

WHEREAS, the Fre-West Realty Trust did not complete the work on Charles Way;

WHEREAS, when the Town sought to collect on the Tri-Partite Agreement, it was informed that the FDIC had taken over the account, and that the funds were no longer available;

WHEREAS, Shyjan approached the Select Board in 2020, noting it did not have a deeded right to access its property via Charles Way because the Road had not been accepted as a public way, and also noting that it desired to acquire access to allow him to develop property he owns abutting Charles Way;

WHEREAS, The Town, through its Department of Public Works identified various upgrades to the existing Charles Way necessary to allow the Town to accept it as a public way;

WHEREAS, the Town informed Shyjan that such improvements will cost at least \$150,000, and could cost an additional \$75,000;

WHEREAS, Shyjan has agreed to place the amount of \$150,000 in an escrow account to be applied to the cost of upgrades necessary to bring Charles Way up to the standards required for acceptance as a Town road;

WHEREAS, the Town has agreed to move forward with Town Meeting warrant articles seeking authorization for the taking of an easement over Charles Way and for the acceptance of Charles Way as a public way; and

WHEREAS, Shyjan has filed an Approval Not Required Plan with the Chelmsford Planning Board seeking endorsement of a plan showing lots with frontage on Charles Way.

NOW THEREFORE, in consideration of the Parties' mutual promises, conditions, representations, warranties and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged, the parties hereby agree as follows:

1. The Town agrees to go through the process for acceptance of Charles Way as a public way. This process includes laying out Charles Way as a public way by the Select Board, referring the layout plan to the Chelmsford Planning Board for review and report pursuant to G. L. c. 41, §§ 81G and 81L, and ultimately submitting a warrant to Town Meeting for acceptance of Charles Way as a public way.

2. The Town also agrees to undertake the process necessary, via gift, purchase or eminent domain, for acquisition of an easement over Charles Way for the purpose of establishing Charles Way as a public way.

3. Once Town Meeting has voted to accept Charles Way as a public way, Shyjan agrees to place the amount of \$150,000 into an escrow account to be held by _____ to be used towards the cost of completion of work on Charles Way necessary to bring the way up to Town standards. The Parties agree that the money in the escrow account will be released once the Town has completed acquisition of an easement interest in Charles Way sufficient to allow such roadway to be used as a public way.

4. If the Planning Board votes to endorse the Approval Not Required Plan submitted by Shyjan, the Town agrees to hold such plan in escrow until such time as the Town has acquired an easement interest in Charles Way sufficient to allow such roadway to be used as a public way.

5. The Parties agree that once the Town has acquired sufficient interest to allow Charles Way to become a public way, and the funds from the escrow account have been released, and the Approval Not Required Plan has been released and recorded, that Shyjan may apply for building permits for the lots shown on the Approval Not Required Plan.

6.

a. Except as set forth in this Agreement, the Parties have not relied upon or been induced by any representation, statement, promise or disclosure of the other party or their attorneys, representatives, employees, officers, insurers or agents, but have relied upon their own knowledge and judgment and upon the advice and representations of their counsel in entering into this Agreement; they have read and fully know and understand the terms of this Agreement; and they are fully advised as to the legal effect thereof.

b. The Parties each represent that (1) the execution of this Agreement has been duly authorized by, and that each of the respective signatories below are authorized and empowered to sign this Agreement on behalf of, the indicated Party, (2) they have read and signed this Agreement knowingly, voluntarily, freely, willingly and without constraint or duress, and fully understand the Agreement; (3) they are authorized to enter into this Agreement and that each person executing this Agreement in a representative capacity on behalf of any of the parties has the authority to do so and that following their execution hereof the Agreement will remain binding and enforceable upon the Parties, their successors and assigns, (4) they are competent to, and do, fully understand the provisions of this Agreement, and (5) they have had the benefit of the advice of counsel of their own choosing in deciding to enter into this Agreement.

7. This Agreement is contractual in nature, is the final expression of the Parties agreement and constitutes the entire agreement among the Parties with respect to the subject matter hereof, superseding all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof. No other promises or agreements shall be binding or shall modify this Agreement, which may not be altered or modified except by a written instrument executed by all Parties hereto.

8. The Parties have not assigned or transferred (in whole or in part, including but not limited to any assignment or transfer by subrogation or by operation of law) to any other person, corporation or other entity, any of the claims, rights, demands, damages, liabilities or causes of action which they have agreed to compromise and release herein.

9. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one agreement binding on the Parties. This Agreement shall be signed by hand, and not by electronic signature, with each copy having the full force and effect of an original.

10. This Agreement shall not be subject to any mistake of fact and there is absolutely no agreement or reservation which is not clearly expressed herein. The terms of this Agreement may be waived, modified, amended or otherwise changed only in a writing signed by all Parties hereto. The failure of any Party at any time to require the performance of any provision hereof shall in no manner affect the right of such Party at a later time to enforce the same.

11. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective agents, representatives, attorneys, insurers, parents, subsidiaries, successors, assigns, and affiliates.

12. The Parties cooperated in the drafting of this Agreement, and its provisions shall not be construed against any Party. The Parties waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

13. The Parties agree that this Agreement, and any disputes arising out of it, shall be interpreted, enforced and governed under the laws of the State of Massachusetts. The Parties also agree that exclusive jurisdiction and venue is reserved to the courts of the Commonwealth of Massachusetts for any actions that may arise out of the performance or enforcement of any provision of this Agreement. The prevailing party in any action to enforce the terms of this Settlement Agreement shall be entitled to its legal fees incurred as part of such enforcement action.

14. The Parties agree that, should a court of competent jurisdiction declare any portion of this Agreement to be invalid, in whole or in part, all of the other terms and conditions hereof shall thereafter be of no further force and effect.

IN WITNESS HEREOF, the Parties hereby execute this Agreement as of the date first written above.

TOWN OF CHELMSFORD

By and through its

SELECT BOARD

Virginia Crocker Timmins, Chair

Kenneth M. Lefebvre, Vice Chair

George R. Dixon, Jr., Clerk

Patricia Wojtas

Mark C. Carota

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ____ day of _____, 2022 before me, the undersigned notary public, personally appeared Virginia Crocker Timmins, Select Board Chair for the Town of Chelmsford, and proved to me through satisfactory evidence of identification, which was my personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of the Town of Chelmsford.

Notary Public
My commission expires:

MICHAEL SHYJAN, Individually

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ____ day of _____, 2022, before me, the undersigned notary public, personally appeared Michael Shyjan and proved to me through satisfactory evidence of identification, which was my personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My commission expires: