



## Town of Brewster

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Office of:  
Select Board  
Town Administrator

### MEMORANDUM

**TO:** Select Board  
**FROM:** Peter Lombardi, Town Administrator  
**RE:** Next Steps on Millstone Road Project and Potential Redesign  
**DATE:** March 12, 2021

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Following our discussion about this project on February 22 and based on feedback we have received since, I am now recommending the Town take the following next steps on this project:

1. Create new project page on the Town website where residents can access all relevant documents pertinent to this project.
2. Schedule and convene a 4<sup>th</sup> community forum in the next few weeks where all residents are invited to attend and participate. This forum will review the 75% design project as originally proposed at the November 30 meeting and will also highlight each of the potential design revisions that have been discussed with representatives from Save Millstone Road, including but not limited to: narrower travel shoulder, narrower sidewalk, elimination of 3' grass buffer between road edge and sidewalk and installation of asphalt curbing instead of Cape Cod berm, elimination of major changes in horizontal road alignment (2 locations), alternative design considerations at Rail Trail crossing, etc. Town officials will answer questions and invite feedback from residents regarding what elements of the project they support. Residents who live on or directly off Millstone Road will be notified of this forum by postcard in advance. Information will be posted on the Town website as well. The forum will be live broadcast on Channel 18 and will be rebroadcast frequently thereafter, and will be available for viewing on the Town website as well.
3. Encourage residents who are unable to attend this next forum to submit written comments within one (1) week after the date of the forum.
4. Aggregate the feedback received from residents at the forum and in writing, and report back the collective public sentiment to the Select Board at a subsequent meeting.
5. Consider drafting a change order that would direct VHB to undertake certain revisions to the original 75% design based on community feedback. Review and execute that change order as appropriate.

6. If necessary, re-stake the new limits of work to the edge of the paved surface (sidewalk or berm) and convene a 5<sup>th</sup> community forum after VHB has completed their work to review the redesign with residents before finalizing the design and (re)initiating applicable state and local permitting processes.

This proposed process is largely informed from guidance received from town counsel in the past couple weeks regarding the extent to which individual residents would be involved in the (re)design process for this project as outlined in the draft MOUs included in this packet and as discussed on February 22. You will recall that the Town received the initial draft MOA just a few days before my status update to you on the 22<sup>nd</sup>. Town counsel has expressed significant concerns in the following areas:

- The Select Board as the Town's executive body is responsible for contracting and acts as Road Commissioners. Therefore, the Select Board has sole authority over the construction of the roadway. Road construction projects are undertaken pursuant to G.L. c. 30, sec. 39M. The process requires development of design specifications which are then bid out to construction contractors. This process is not amenable to the type of collaboration suggested in the MOU as the contractor will require specific direction from the Town as the awarding authority. Continuing input during design and construction will create issues with the designer and contractor as to the direction of the project, which will not only result in added costs and delays, but will be difficult to implement as the designer and the contractor will require direction from a single point of contact - the awarding authority.
- The requirement in the original MOU, prior to revision, that bids for construction be evaluated based upon the bidder's commitment to constructing the road in conformance with the MOU violates the bidding process by adding a condition not allowable under applicable law.
- The MOU provides a specific citizens group with access to the design and construction process while essentially shutting out other residents who have an interest in the process.

In short, town counsel believes that entering into a binding agreement such as the proposed MOU, even with limited enforceability, may expose the Town to unnecessary litigation by various interested parties and/or additional project delays and cost increases. In addition, as we discussed, the draft MOU expressly reserves the rights of individual residents to exercise their free speech and petition rights, which likely could not be waived in any event. Thus, the very individuals who are part of the citizens group may continue to oppose the project despite the group signing the agreement.

As discussed on February 22, the sentiments of individual members of this citizens group regarding the initial project design and proposed changes to it are unclear. Consistent with our process before the formation of this citizens group, we intend to be deliberative and transparent in soliciting and hearing public feedback on this project. It is also unclear what the residents of Millstone Road, those most impacted, think about this project. We'd like to hear (again) directly from them.

For your reference, included in your packet is recent correspondence to the Select Board and Town Administration from a resident as well as input from the Bikeways Committee regarding the proposed changes to the project design. I look forward to our discussion.