

**The Town of York Police Station and Connector Road Projects**  
**February, 2014**

The citizens of York have witnessed a confounding and painful political process with the development of the new Police Station. The process has torn at the fabric of our democracy and eroded confidence in our municipal leaders. There may be no simple answers to the many problems besetting the Police Station and Connector Road (Projects) but I have some reasonable questions and opinions that may help clarify some of the more disturbing problems. Throughout, I use capital letters to describe persons, titles, and specific contract terms. These are intended as a reference for anyone interested in reviewing municipal and Projects records. I should also note that I previously offered my professional services to assist the Town with these Projects. I've followed the issues as well as I can but without having access to all the information, there are surely things I've not considered.

Tax dollars are ultimately at stake, but what is equally significant to me is that truth and fairness may be sacrificed in an attempt to right administrative wrongs. This story has been underplayed throughout the past couple of years due to politics.

I'll begin by questioning the activities of some members of the Board of Selectman (BOS). Then I'll question the apparent errors and omissions of the Architect, and the apparent defects and deficiencies in the Work of the Contractor. I'll question the activities of the Municipal Building Committee (MBC), and the Town Manager and I'll question if they acted in unison to evade, confuse, misdirect, misinform, maintain secrecy, and omit important facts about the Projects. I'll also question if appointed and employed public officials were involved in furthering the problems.

An Architect was selected during the early planning stage of the Projects. Sometime thereafter the BOS appointed a MBC in accordance with the Town Charter to "supervise the construction of all municipal buildings". Did at least three members of the BOS attend and participated in the activities of the MBC? Were these legal meetings of the BOS? Did the Selectmen influenced the design of the Projects including the location of various elements of the plans especially the Connector Road, which caused problems with legal ownership of land and unlawful permitting and construction activities? Who did what and why has yet to be publicly disclosed and analyzed objectively though the record of events is public information.

Design professionals, Architects and Engineers for these projects operate under the American Institute of Architects (AIA) Owner/ Architect Agreement (O/A), which is accompanied during construction by some form of the AIA Owner/Contractor Agreement (O/C), which includes some form of the AIA General Conditions of the Contract for Construction. The intent of the AIA documents is to provide a unified legal framework within which the decision, design, and delivery phases of the projects can be orderly executed. The Owner and Architect and sometimes the Contractor work together during the decision and design phases. During these phases the Architect prepares conceptual and Schematic Design Drawings, which are reviewed and revised as required. Design Development Drawings further refine the decisions in these phases

and finally, after everyone has agreed on the requirements, the Architect prepares Construction Documents. Typically, Construction Documents are complete so that a project can be lawfully permitted, final costs can be assured to everyone's satisfaction, and the Owner/Contractor Agreements reference the Construction Documents so that the delivery phase can proceed. There are variations on these phases, but the results are pretty much the same. The Architect and the Contractor then deliver the project(s), with the Contractor being responsible for the construction Work. The Architect is obligated by the Owner/Architect Agreement for the design phase and again during the delivery phase to observe that the Contractor's Work complies with the requirements of the Construction Documents.

It's not uncommon for problems including disputes to arise during the delivery phase of a project. When problems do occur and additional time and costs are incurred the Owner is informed and Change Orders are executed. It's not common for the Owner to pay more without questioning the cause and therefore the reason for the additional time or cost. Most Owners' do not have unlimited funds and they do not want to pay more than they agreed to pay. Furthermore, the cause of many problems in the delivery phase of projects may be attributed to errors or omissions in design or deficient or defective Work, which would be the responsibility of the Architect and Contractor respectively.

I've often used the general terms Owner, Architect, and Contractor herein because this is the typical process. Hereafter the terms become specific with regard to the Town of York. In this case, the Owner is a complex entity, a Town. The Town Charter requires, and the BOS appointed, a Municipal Building Committee to "supervise the construction of all municipal buildings". It also appears that the BOS gave the Town Manager the responsibility to act as the Owner's Representative, thus, creating a potential for conflict with the Owner/Architect and Owner/Contractor Agreements. Which entity is or was responsible for the Owner's part in the O/A and the O/C Agreements? In their shared capacity, did the Town Manager or the MBC fail to act responsibly or interfered with the Contractor's Work and the Architect's Design by providing inaccurate or incomplete information. For example, did the Town Manager or MBC provide the Architect with clear title to the projects land prior to the Architect's completion of Construction Documents? Did the Town Manager authorize the Contractor to proceed with the Work of clearing the project site for the Connector Road even though there were no environmental or Planning Board permits? Was that his responsibility? What responsibility did the Municipal Building Committee have? Was the Town Manager appointed to the Municipal Building Committee and did he therefore act in accordance with his "supervisor capacity". Could the Town actually "supervise the construction", as the Town Charter requires, or was the MBC merely collecting or providing information during the decision, design, and delivery phases? What was the extent of the Towns "supervision" during construction? These questions are critical because the AIA Documents require the Architect to design and the Contractor and only the Contractor to direct the Work. Were the Owner's responsibilities clear? What is the consequence of any confusion? Will it cost more to deliver these projects than was initially considered? Most disputes with these kinds of

relationships, which involve additional cost, may be resolved with truthful discovery and if required, arbitration.

Defects and deficiencies occur in the Work during the delivery phase (during construction). The AIA General Conditions of the Contract for Construction require the Architect to inform the Contractor of defects and deficiencies in the Work that require correction. Did the Architect fulfill his obligations with these Projects in this regard? Usually any deficient or defective Work is corrected, but sometimes a dispute arises over fault. For example, did the Contractor have complete Construction Documents that showed accurate locations for the Projects components? What responsibility did the Contractor have for obtaining environmental of building permits prior to Construction? What responsibility did the Town Manager or MBC have? If there is a dispute about defects and deficiencies in the Work and there are additional costs, these kinds of issues may be resolved with truthful discovery and if required, arbitration.

The Planning Board voted to approve an after-the-fact permit for the Connector Road construction (site clearing). This was done following a public hearing in which illegal site clearing activities and environmental damages were identified and recorded in testimony. The Planning Board later voted to rescind the permit also in violation of law. The Planning Board was aware of the illegal activities yet a majority of the Planning Board chose to attempt to legitimize the illegal activities instead of upholding their oath of office. It's not entirely clear how the CEO was able to ignore the violations of the Shoreland and Zoning regulations. Does his late action and subsequent departure from office reveal the pressure he was under to perform is legal responsibilities? Did the Town Manager improperly influence the performance and activities of the Planning Board or any other Town employees or interfere with the contractual obligations of the Architect and Contractor? Did Town officials misdirected or concealed the extent of wrong doing and illegalities?

The public has only limited information about any claims or disputes with these Projects though it's been almost two years in the disrupted delivery phase. Are the O/A and O/C Agreements still in effect or have they been properly terminated. What is the cost consequence of any ongoing Agreements? It's not clear what the extent of the problems is because much of the record has been maintained in secret or with little truthful revelation by all the parties. The Town Manager administers the freedom of information. Therefore the public information and discovery process is dependent upon his delivering all pertinent documents.

The BOS recently voted to continue the construction of these Projects as originally intended with corrections of the land ownership problems and correction of defective or deficient Work. It's not clear how the issues of additional time and costs are being resolved or who was actually responsible for the problems to begin with. It is clear to me that the public is not getting what was agreed to in referenda and it is apparently expected that the public will pay more and accept conditions that are not safe or responsible with regard to traffic and public safety. The public may continue to be denied transparency of process, and forced to accept that officials have fail to uphold their obligations to the public and the law. Only truth and fairness protects citizens.

A political solution will not necessarily resolve unfairness if the truth is compromised and the citizens of York are required to pay for something they do not want. Politics cannot resolve the problem when politicians falter. Three current members of the BOS continue to avoid the inevitable discovery of fault with these Projects. Two of the three members of the current BOS have a long standing interest in these Projects and they may want to avoid fault. Perhaps the current majority of the BOS is not enabling a process of transparency or discovery because they don't all know what is at stake. They have instead chosen to continue supporting the original plan even though the Town has chosen in referenda to not pay the additional cost of traffic control at the intersection of the proposed Connector Road and Route One. At this time, Ronald Nowell and Torbert Macdonald are the only members of the BOS advocating a clean slate with complete discovery and reconsideration of the design. No one knows the true costs of these projects. Yet decisions have been made and justified as if they do.

At the very least, a true accounting of the costs to date and the cost to continue these projects must be made public. If there are claims to be made and disputes to be settled, these costs and consequences must also be made public; then, and only then, can a truthful and responsible assessment be made of the viability of any plan to continue.

Glen MacWilliams

I have more than thirty years experience as an architect, much of it in private practice in York. I'm a licensed architect in Maine and New Hampshire. I also served many years as chair of the York Planning Board, and the York Conservation Commission. My commitment to my community has been and continues to be heart felt.