

**BOARD OF SELECTMEN**  
**Minutes of December 5, 2005**

**MEMBERS PRESENT:** Chairman Roger Hohenberger called the meeting to order at 7:05 PM. Selectmen Galen Stearns, Bruce Breton, Alan Carpenter and Margaret Crisler were in attendance. Town Administrator David Sullivan was also in attendance. Following the Pledge of Allegiance, Mr. Hohenberger read the agenda into the record.

**ANNOUNCEMENTS:** Mr. Breton introduced Dr. Melissa Magnuson, owner of the new Canobie Lake Veterinary Hospital. Dr. Mangnuson approached to explain that hers will be a full-service office, with two doctors on staff, offering care for dogs, cats, birds, and exotic animals. She announced that the Hospital's Grand Opening would take place on the following Saturday from 8:30 AM to 4:00 P.M., and that Santa and Donder would be present. The Board welcomed Dr. Manguson to Windham and wished her good luck in her endeavor.

*Mr. Hohenberger* reminded all that the Christmas Tree Lighting was scheduled for December 10<sup>th</sup>. He noted that Santa would be arriving at approximately 2:30, and would then be available for pictures inside the Town Hall. The Girls Scouts will be hosting a mitten tree and leading the attendees in carols, the Community Band will be on hand, the Women's Club will be selling their latest cookbook, and the Presbyterian Church will hold a spaghetti supper immediately following the lighting.

Mr. Sullivan requested that the Board accept a donation from Klemm's Bakery for \$100 worth of pastries, and that of a \$25 gift certificate from Shaws for the lighting.

Mrs. Crisler moved and Mr. Stearns seconded to accept the donations with the Town's thanks. Passed unanimously.

*Mrs. Crisler* announced that the Senior Christmas Party will take place on Wednesday, December 14<sup>th</sup> at noon. Seniors should contact Shirley Pivovar to sign up.

**LIAISON REPORTS:** Mr. Carpenter reported that the Cable Advisory Board had met the previous Thursday, and were about to proceed with the purchase of a 500GB hard drive for storage and replay uses. Mr. Sullivan added that the WCAB will be before the Board the following week to request waiving of the bid process for this purchase, as it is a specialty item.

*Mrs. Crisler* reported that she and Mr. Stearns had attended a CTAP meeting the previous Thursday. She noted that the CTAP committee was formed to address the I-93 widening and anticipated growth impacts, and gave a brief outline of the composition and objectives. Mrs. Crisler noted that the NHDOT has indicated it does not wish to widen any further roadways in efforts to avoid sprawl.

Mr. Stearns stated he had been disappointed, as he had not expected the meeting to be a planning session and that he had believed the purpose was to aide the impacted towns. He indicated he had inquired at the meeting when the specifics will be discussed regarding the corridor towns and, as a result, an 11 member steering committee will be formed, however, only 4 members will actually be from the impacted towns with the remainder being from special interest groups.

*Mrs. Crisler* reported that the Planning Board and members of the Board of Selectmen had met with Derry regarding the issue of Spruce Pond Estates, and Derry seems to feel the access is Windham's problem to solve. Mr. Hohenberger felt that Derry seemed to be waiting for a formal application from the developer.

*Mr. Breton* announced that *Mr. Libby*, owner of *Shaws*, will be present at an upcoming meeting to introduce himself to the community.

**BOARD OF HEALTH/31 WEST SHORE ROAD:** *Mr. Breton* moved and *Mr. Carpenter* seconded to enter into the Board of Health. Roll call vote: all members “yes”. *Mr. Hohenberger* read the public hearing notice into the record.

*Mr. Al Turner*, Planning Director, explained that the proposed septic system will be 75’ from the proposed well on the same lot, and that a second waiver will also be required to allow for the septic to be 75’ from the shoreline. *Mr. Turner* then indicated that: the Town requirements for both are 100’; the property abuts Town conservation land; the waivers are part of a proposed new dwelling to replace the existing cottage; and the neighboring well impacted is 78’ away.

*Mr. Breton* clarified that the project meets all State requirements. *Mr. Turner* concurred, noting that the neighbors’ wells across the street are over 100’ away.

*Mrs. Crisler* inquired whether the property was being converted to year-round use, and *Mr. Turner* replied in the affirmative, stating that the new structure would be year-round. *Mr. Hohenberger* then inquired whether the existing septic system was in failure, and *Mr. Turner* replied it was not.

*Mr. Stearns* inquired why the proposal showed two (2) leaching catch basins. *Mr. Turner* explained that the basins are excavated at a depth of approximately 4’ and filled with gravel, which allows the water to be directed there rather than over ground.

*Mr. Peter Zohdi*, representing the owner *Eric Nickerson*, approached to provide the Board a plan of the area. He explained that a small, state-of-the-art system, which was approved by the State, was being proposed for installation. He further noted that all distances meet the State requirements, and that not much information was available regarding the properties across the street from the site, however, it was believed they were on *Pennichuck*.

*Mr. Hohenberger* inquired whether the Shoreland Protection Act specified requirements regarding wells, to which *Mr. Zohdi* responded it did not. *Mr. Carpenter* inquired why the system could not be moved closer to the road, and *Mr. Zohdi* indicated that a 10’ setback was required.

A brief discussion ensued regarding the proposed number of bedrooms versus the size of the proposed leach field.

Attorney *David Lefebvre* approached on behalf of *Mr. Murray*, the owner of 29 West Shore Road. *Atty. Lefebvre* presented photographs of the area to the Board, and advised them that a third well would also be impacted: that being the *Drake’s* across the street which had just been drilled that day and was at a distance of 70’ from the proposed septic system.

*Atty. Lefebvre* went on to state that the Town’s regulations state no soil absorption systems shall be installed within 100’ of a drinking water supply, and that in this instance there were three. He did not believe that the Board had reason or authority to grant the waiver as requested.

*Atty. Lefebvre* then cited Section VI of the Water Supply Regulations, noting it does allow for a waiver if not doing so will cause “manifest injustice” to the property owner. He noted that the Board must balance the owner’s desire with the public interest and must protect all wells and their current and future owners. *Atty. Lefebvre* pointed out that the property had been purchased as seasonal, without the septic system, and was restricted by the Town’s regulations. He felt nothing prevented use of the property as it is, and thus there was no “manifest injustice” to *Mr. Nickerson*.

Atty. Lefebvre then pointed out that Mr. Murray possessed some technical knowledge of septic systems, and questioned whether the system as proposed was suitable for the intended structure. He also noted that the system requires electricity for aeration, and that power loss frequency occurs in the area. Atty. Lefebvre also pointed out that the system requires bi-annual maintenance and expressed concerns of what may happen if it were not performed.

Atty. Lefebvre then read from the Town's Master Plan regarding residential septic failures and conversions to year-round use and related concerns, and stated that this proposal does not meet the standard for a waiver and is contrary to the Master Plan.

Mrs. Crisler then inquired whether Mr. Murray's property was year round, to which Atty. Lefebvre responded it was. Atty. Lefebvre then presented a written copy of his argument, along with a letter from area resident. Mr. Steven Miers.

A discussion ensued regarding the distance from the Drake's well to the Murray's septic system, whether the Drake's well should be considered in this matter, and how the Drake's had obtained a permit to drill so close to the Murray's septic system.

Mr. Carpenter expressed concerns that the Board may need further information before proceeding. Mr. Hohenberger then read Mr. Miers letter into the record.

Ms. Drake explained that they were currently on Pennichuck, and had pulled the well permit the previous summer due to concerns with their service. Mrs. Crisler then inquired how far from the property line the well was, and whether or not it was intended for drinking water. Ms. Drake replied the well was located approximately 70' from the line, and would be used for drinking water.

Atty. Ratigan then inquired of Ms. Drake what type of well it was and whether any agreement had been made between she and Mr. Murray regarding use of the well. Ms. Drake replied it was a bedrock well and that, to date, no agreement was in place.

Atty. Ratigan then stated that replacement of old systems such as this was a good thing and, hydrogeologically there was no connection between bedrock wells and septic system. He then pointed out that the distance between Mr. Murray's own well and septic was only 60' +/-.

Atty. Ratigan went on to state that the owner could build around the existing system, however it was better for all to replace it. He further noted that the owner is under no obligation to replace it unless it is in failure.

Mr. Hohenberger inquired what the distance would be from the proposed well to the existing septic, to which Mr. Zohdi responded approximately 50'.

Further discussion ensued regarding Mr. Murray's well and its lack of a permit. Mr. Carpenter inquired whether tying into Pennichuck had been explored, to which Mr. Zohdi replied doing so would not give them any maneuvering room with the system.

After further discussion, Mr. Carpenter suggested this hearing be continued to allow submission of more information, documents, and plans. Mr. Nickerson questioned how he was to obtain further information for the Board without permission to enter onto the neighboring properties, noting that if Mr. Murray and Ms. Drake would grant their permission he would then send out surveyors to pinpoint the locations. Mr. Murray suggested that Mr. Nickerson also locate his existing system for the Board. Mr. Nickerson

agreed, and suggested the Board conduct a site walk of the area. Permission was then granted by Ms. Drake and Mr. Murray to allow Mr. Nickerson to conduct a survey.

Mr. Carpenter then moved and Mr. Breton seconded to continue this hearing to January 9, 2006 at 8:00 PM to provide the applicant the opportunity to provide the Board of Health with all necessary documents, including the location of all existing and proposed area wells and septic systems. Passed unanimously.

**BOARD OF HEALTH/40 TURTLE ROCK RD:** Mr. Hohenberger read the public hearing notice into the record. Mr. Turner explained that this waiver request also pertained to the 100' requirement, and that the distance from the proposed septic to the nearest well is 75'. Mr. Turner noted that tests pits had shown no refusal until approximately 6' down, indicating good soil, and that the proposed system is an Eljen in-drain system. He then stated that the plans show no abutting wells being impacts.

Mr. Hohenberger indicated he would like to see the wells pinpointed on the plan, and Mr. Wes Aspinwal of Ed Herbert Associates stated he had supplemental information available. Mr. Aspinwal explained that the existing system is within 30' of Cobbetts Pond, and was installed at the year-round cottage in the 1950's. Mr. Aspinwal stated that owner would like to improve the system and relocate it to 150' from the shoreline. He noted that one well is about 180' from the proposed system, and a survey of lot 21K-43 shows their well to be 50' from the existing leach field, which would put it 135' +/- from the proposed. Mr. Aspinwal then noted that the owners, Mr. & Mrs. Delaney, also own the lot across the street, and the proposed system will be over 500' from that.

Mr. Carpenter inquired what the depth of the lot was, and Mr. Aspinwal replied that, from the shoreline to the lot line was 215' +/- . Mr. Carpenter then noted that, based on the size, they should be able to meet the 100' requirement and Mr. Aspinwal responded that the existing well offered good quality/quantity of water and that the expense and risks involved in a new well was not satisfactory.

Mr. Carpenter again pointed out that the abutting wells and septic systems were not depicted on the plan, and a discussion ensued regarding postponing the hearing versus the consistency of Board's requests for information to be presented.

Mr. Carpenter then moved and Mr. Breton seconded to continue this hearing until January 9, 2006 at 8:15 PM pursuant to the Board's receiving surveyed plans showing all abutting properties, septic systems and wells. Passed unanimously.

Mr. Breton moved and Mrs. Crisler seconded to exit the Board of Health. Passed unanimously.

Mr. Hohenberger then called for a five minute recess.

**HOPKINS ROAD RECLASSIFICATION:** Mr. Hohenberger read the continuation notice into the record. Mr. Turner then presented newly available, aerial photographs of the area to the Board highlighting the proposed layout of Hopkins Road.

Mr. Sullivan reminded all that this matter was being heard in accordance with State statutes regarding petitions for reclassification by a property owner in which all costs are to be borne by the applicant. Mr. Sullivan explained that this method entailed only one public hearing, and if the Board deems that a public need exists they can approve the petition and the applicant may proceed and bear full cost of the improvements. Mr. Sullivan

noted that the Board had continued the hearing appropriately and, as a courtesy only, all abutters had been notified a second time.

Mr. Joe Maynard of Benchmark Engineering approached representing H&B Homes, the petitioner, and extended his thanks to all those who had attended the recent joint meeting with the Derry Planning Board. Mr. Maynard stated that, at that meeting, Derry had clearly wanted Windham to make the first move toward handling traffic from the Spruce Pond subdivision. Mr. Maynard reminded the Board that H&B will bear the cost to bring Hopkins Road to town standards, and that it would serve as the rear exit to Spruce Pond.

Mr. Hohenberger inquired whether engineering had been conducted to establish the feasibility of coming in at the required 2% grade at the intersection, to which Mr. Maynard replied it had, however, after several revisions to the plan a waiver will still be required to allow for 4%.

Mrs. Crisler inquired about the State's position on allowing crossing of the railroad bed. Mr. Maynard indicated that the State does still plan to reactivate the rail line, however, if there is an existing crossing such as Hopkins Road, it can be utilized.

Mrs. Crisler then inquired whether there was any other way for the developer to reach Windham Depot Road, and Mr. Maynard replied in the negative, stating that they did not own any other land in an available area. He stated H&B would have to purchase additional land to do so, and it would be a very involved process to place a road where one currently doesn't exist.

Mr. Carpenter inquired if Hopkins Road went through at the end of the Mitchell Pond Road cul-de-sac, would it then be too close to the existing properties. Mr. Turner replied it would, being set back only 30' as opposed to the required 50'. Mr. Turner noted, however, that it would be legally non-conforming as Hopkins Road already existed at the time the properties were built.

Mr. Hohenberger noted that several petitions had been submitted at the previous meeting, and then inquired whether H&B would be required to intersect at 90° with the railroad. Mr. Maynard stated there were still some logistical items that needed working out, however, they can't proceed with them until the petition is approved by the Town.

Mrs. Crisler requested that Ms. Laurie Rauseo, Traffic Engineer, approach to summarize the information presented by her at the previous meeting. Ms. Rauseo reiterated that, assuming no connection to Windham Depot Road, 20% of the Spruce Pond traffic will utilize Hopkins Road equating to 280 vehicle trips per day. She further noted that traffic on Morrison road has already seen a 50% jump since completion of the Castle Reach subdivision, and even further increases since Fox Crossing.

Mr. Hohenberger inquired whether there were any plans to develop Taylor Farm Road, to which Mr. Turner replied in the negative. Mr. Turner noted it was a reserved right-of-way, and was essentially a logging path at this time.

Mr. Hohenberger then opened the discussion to the public in attendance.

Mr. Chris Rosetti, 3 Mitchell Pond Road, approached to note that Hopkins Road bears no resemblance to even a dirt road, and stated he believed there to be serious issues with the proposed opening, including: the 4% grade at Hopkins and Mitchell Pond roads and resultant blind spots; maintenance of such a large stretch of unused road; and impacts to the property owners of 26 Mitchell Pond Road, including headlights shining in their bedroom windows and possible impacts to their well. Mr. Rosetti then noted that Morrison Road is the only designated "scenic roadway" in Windham, is only 24' wide

with a narrow shoulder, and is already overburdened. He stated that there are several blind spots on Morrison Road, and that turning onto/off of Morrison Road to North Lowell is dangerous, as well. Mr. Rosetti pointed out that construction vehicles are causing Morrison Road to deteriorate, and to increase traffic in the area is a disaster waiting to happen. He further noted that he had attended the joint meeting with Derry, and had heard the same concerns regarding overburdened roads expressed by them. Mr. Rosetti felt the Board's responsibility was to the residents of the area, of which 90+/- were opposed. He urged the Board to listen to their constituents and deny the request.

Mr. Bob Coole, Morrison Road, approached to explain his correspondence suggesting Taylor Farm Road be utilized by H&B instead, noting that he felt the majority of Mitchell Pond Road could be bypassed by routing the Spruce Pond traffic to Taylor Farm Road. He stated it would also allow for a narrower roadway and a future connector out to North Lowell Road. Mr. Coole then noted that he believed that, per State statute, H&B could apply to the Superior Court to get a connection to Derry.

Mr. Coole then noted that not all members of the Board had been present during the site walk, as per RSA 231:11, and if the petition were approved and appealed the validity of their motion could be in question. Mr. Carpenter clarified that the RSA in question pertained to the laying out of a roadway, rather than upgrading as was the case in this petition. Mr. Coole suggested that Mr. Carpenter's interpretation be confirmed with Town Counsel.

Mr. Coole then reiterated that Taylor Farm Road resulted in much less impact to the area, and urged that it be considered. Mr. Hohenberger pointed out that, as the Taylor Farm Road area was presently open space and under control of private owners, they may not legally be able to do so. Mr. Coole suggested an inquiry be made to the owners, and Mr. Turner noted that Taylor Farm Road could be laid out so as not to effect the open space, which would be a Planning Board matter.

A discussion ensued regarding the number of homes in the area of Taylor Farm Road, the status of the cul-de-sac, and future development of the area. Mr. Maynard stated that the area poses some issues, including the sale of 14 lots to date including open space rights, a substantial wetlands crossing, and lack of a valid railroad crossing.

Mr. Dennis Senibaldi, 20 Partridge Road, approached to voice several concerns, including: three members of the Board had previously voted against this upgrade; there have been no changes in the application; it is not the Town's responsibility to address the developer's access problem; and the lack of submission of a formal plan by H&B to the Derry Planning Board. Mr. Senibaldi urged the Board to maintain their previous decision, and reminded them that over 100 taxpayers were opposed to upgrading Hopkins Road.

Ms. Holly Lemay, 26 Mitchell Pond Road, approached. She stated that her property was not designed to be a corner lot, as it would be if Hopkins Road were upgraded. She noted that opening Hopkins Road would, among other things, reduce her property to a 30' setback, result in privacy and safety issues for her property, and be grossly unfair to her family.

Mr. Jim Finn, Conservation Commission, noted that the Commission was opposed to the upgrade given the large portion of undeveloped roadway and extent of damage to serve only 20% of the vehicles from Spruce Pond.

Mr. Senibaldi suggested that the Board contact the NHDOT regarding their authorization to cross the railroad bed to clarify whether they were aware of the area's status. He then noted that a 20% increase in traffic on Morrison Road was a substantial impact, and suggested the Board send H&B back to Derry with a formal plan.

Mr. Hohenberger then closed the public portion of the meeting.

A discussion ensued amongst the Board members regarding the grading of the intersection, whether the developer could remain within his easements at the 4% grade for the entire length of Hopkins Road, and the length of the undeveloped portion. Mr. Maynard indicated the developer could remain within his easement, and that approximately 2400' would remain undeveloped.

Mr. Hohenberger expressed concerns that no formal plan had been submitted to either Town. Mr. Breton echoed Mr. Hohenberger's concern, and felt no new information had been submitted. He also did not support re-circulating the traffic through the neighborhood as opposed to utilizing Windham Depot Road, which accesses a main roadway. Mr. Maynard noted the difficulty in proceeding with a formal plan without some direction from either Town and approval of the railroad crossing from DRED.

A discussion ensued regarding application to Derry and their position on the matter, and the possibility of constructing a cul-de-sac. Mr. Hohenberger pointed out that the applicant clearly saw the benefit of a connection to Derry.

Mrs. Crisler stated she had been concerned when the subdivisions in that area had been developed because there was no connection, and pointed out that the Planning Board had insisted that Searles connect through during the Castle Reach project; exhibiting their support for connectivity. She felt that both Hopkins Road and the Derry access were needed.

Mr. Hohenberger stated that both access would spread out the congestion, and that Morrison Road may not be able to handle the burden of Hopkins Road alone.

A discussion ensued regarding the concerns expressed by the Lemays and the impacts to the property and possible solutions.

Mrs. Crisler then moved and Mr. Stearns seconded to grant the petition to open Hopkins Road subject to the following: compliance with Planning Board and other processes; that all costs will be borne by the applicant; that special accommodations be made to minimize impacts to the property at 26 Mitchell Pond Road through landscaping and construction of a wall; and that the roadway be built at minimal width and with the least impacts to the environment. This approval shall be conditional upon successfully obtaining access to Windham Depot Road in Derry.

Mr. Maynard inquired whether the Derry access could be gated until the intersection of Windham Depot and Kilrea road was repaired. After a brief discussion, Mrs. Crisler amended her motion, and Mr. Stearns his second, that "unrestricted access" be successfully obtained.

The motion passed 3-2, with Mr. Breton and Mr. Carpenter opposed.

**OLD BUSINESS:** Chief Lewis advised the Board that, per their request, he had solicited bids relative to trading in five (5) surplus vehicles toward the purchase of a new detective vehicle. He advised the members that, in the interim, Gladstone had sold the Ford Taurus previously offered, however MacMulkin Chevrolet of Nashua had bid an equitable offer of a 2003 Chevy Impala in trade for the five (5) vehicles plus \$2,000.

After a brief discussion, Mr. Carpenter moved and Mr. Breton seconded to authorize Chief Lewis and staff to the proceed with the purchase of the Chevy Impala as requested. Passed unanimously.

*Mrs. Crisler* inquired whether the information on the Griffin Park multi-purpose building had been received from Mr. McMahon. Mr. Sullivan indicated it had not, and will follow-up.

**NEW BUSINESS:** None.

**MINUTES/CORRESPONDENCE:** Tabled.

**NON-PUBLIC SESSION:** Mr. Carpenter moved and Mr. Breton seconded to enter into non-public session in accordance with RSA 93-A:3 Iia and d. Roll call vote, all members “yes”. The topics of discussion were personnel and legal.

*Personnel:* The Board, Mr. Sullivan, Mr. McCartney, and Ms. Devlin were in attendance. After a brief discussion, Mr. Carpenter moved and Mr. Breton seconded to approve the hire of Mr. Stogryn and Mr. Gagne as temporary winter plow drivers, subject to successful completion of background checks. Passed unanimously.

*Legal:* The Board, Mr. Sullivan, and Ms. Devlin were present. Mr. Sullivan updated the Board on an ongoing legal matter. After some discussion, Mr. Carpenter moved and Mrs. Crisler seconded to approve a proposed settlement agreement as presented by Mr. Sullivan. Passed unanimously.

*Personnel:* The Board, Mr. Sullivan, Town Clerk Joan Tuck and Deputy Clerk Sean Boylan were in attendance to discuss the status of the Deputy Town Clerk position. Mr. Sullivan will follow-up with all parties.

*Personnel:* The Board, Mr. Sullivan, and Mr. Boylan were in attendance. No decisions were made.

Mr. Carpenter moved and Mr. Stearns seconded to adjourn. Passed unanimously.

The meeting was adjourned at 11:30 p.m.

Respectfully submitted,

Wendi Devlin, Administrative Assistant

*Note: These minutes are in draft form and have not been submitted to the Board for approval.*